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ABSTRACT

This document presents the transcripts from the congressional hearing which addressed four basic issues: (1) visitation rights of grandparents following divorce and custody settlements; (2) the enactment of a federal law to guarantee these rights in the eight states which have no laws; (3) the necessity of a federal law to bring uniformity to the various state laws covering grandparent visitation rights; and (4) the equality of protection for grandparents under existing state laws. Following the opening statements of the members of the subcommittee, the discussions of the three panels comprising the hearings are presented: the panel on social issues (includes testimony from the founders of grandparent's rights groups); the psychiatric viewpoint panel; and the legal viewpoint panel. The appendix includes prepared statements from Doris Jonas Freed, chairperson, Committee on Child Custody Section of Family Law, American Bar Association, and Bettie J. LaMotte, grandmother. (WAS)

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GRANDPARENTS: THE OTHER VICTIMS OF DIVORCE AND CUSTODY DISPUTES

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HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN SERVICES

OF THE

SELECT COMMITTEE ON AGING
HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

SECOND SESSION

DECEMBER 16, 1982

Printed for the use of the Select Committee on Aging

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GRANDPARENTS: THE OTHER VICTIMS OF DIVORCE AND CUSTODY DISPUTES

THURSDAY, DECEMBER 16, 1982

U.S. HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON AGING,
SUBCOMMITTEE ON HUMAN SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2261, Rayburn House Office Building, Hon. Mario Biaggi (chairman of the subcommittee) presiding.

Members present: Representatives Biaggi of New York, Hughes of New Jersey, Ferraro of New York, Rinaldo of New Jersey, Shumway of California, and Craig of Idaho.

Also present: Representative Lantos of California.

OPENING STATEMENT OF CHAIRMAN MARIO BIAGGI

Mr. BIAGGI. The hearing is called to order.

As chairman of the Subcommittee on Human Services I am pleased to convene this morning's hearing entitled "Grandparents—The Other Victims of Divorce and Custody Disputes."

I also conduct this hearing as a grandfather with six grandchildren.

The House Select Committee on Aging is charged with the responsibility to "conduct continuing comprehensive study of the problems of the older American, including . . . participation in family and community life." Our subcommittee is exploring the problem and issue of providing grandparents with the visitation rights under law after marital dissolution.

During the course of today's proceedings, we hope to address four basic questions:

What legal rights do grandparents have to visit their grandchildren after divorce and custody settlements and other forms of marital dissolution? What are the obstacles to enforcement?

Should a Federal law be enacted to guarantee these rights in the eight States which have no laws?

Is a Federal law needed to help bring uniformity to the 42 largely different State laws which govern grandparent visitation rights?

Are grandparents being afforded equal protection under existing State laws which govern visitation rights?

Today in America, approximately 70 percent of older people in the United States have grandchildren. Statistics reveal that women become grandmothers at approximately 50 years of age, and men become grandfathers around age 52. Based on current life expec-

tancy, this can leave as much as a 20- to 30-year period for the development of meaningful relations between grandparents and grandchildren. That is the positive side of the coin.

On the negative side, over 1 million children a year experience the divorce of their parents; a startling 48 percent of those who married in 1970 will eventually divorce. Most people who get divorced will remarry in many instances within 3 years. These contemporary shifts in divorce and remarriage are radically changing the character and structure of the family as we know it. In 1978, 10 million children lived in a household with one natural parent and one stepparent. Today we have far more than the traditional grandparenting. We now have the stepgrandparent and the multiple grandparent family. What we seek to address today is what rights will these grandparents as well as biological grandparents have to visit their grandchildren after marital dissolution.

Our hearing is structured so we may examine the issue from three perspectives—social, legal, and psychological. Our first panel of witnesses could be best described as advocates. A testimonial to the degree of interest which this issue has generated has been the establishment of at least four national grandparents' rights organizations. We are proud this morning to have the founders of three of them with us today. These witnesses, who themselves are grandparents, will address the problems associated with the 42 State statutes on this subject as well as the lack of judicial decisiveness.

Some of our witnesses have incurred enormous personal expense—as much as $60,000 in one instance—simply to acquire basic visitation privileges with their grandchildren. An issue we must raise today—what does a grandparent without financial resources do—are they being denied equal protection under the law? Finally, this first group of witnesses will offer their views on what role, if any, the Federal Government should have in this area.

Our second group of witnesses are noted psychiatrists in this field who will address the importance of grandparent and grandchildren relations, as well as problems which can ensue from adversarial court battles. These witnesses will also discuss this issue from the standpoint of what is in the child's best interest in awarding grandparent visitation privileges.

Our third and final group of witnesses are lawyers who will try and tackle the complex legal issues before us today. The most fundamental of these is: Is there a Federal role in this area, and if so what is it? Further, does the existing lack of uniformity among the 42 State laws on grandparent visitation impact adversely on the implementation of these rights by the affected grandparents? Is there a denial of equal protection under the law by virtue of excessive costs which certain States require in order for a grandparent to gain visitation privileges? Finally, when determining the legal status of grandparent visitation privileges—how is "best interest of the child" standard applied?

One of the most remarkable developments—that has occurred since this hearing was announced several weeks ago—has been an influx of calls and letters from across the Nation from grandparents and others concerned with this issue we will raise today. Here is a folder of all of those letters, and the office has been besieged with phone calls, and I expect that it will develop into an ava-

lanche as a result of these hearings. These letters—which total more than 100—address themselves to the major issues we will discuss today.

Many of those grandparents who wrote shared similar problems. The diversity of State laws seemed to be a major problem. A dentist, from El Cajon, Calif., who has been involved in litigation for 2½ years to be granted the right to visit his 4-year-old grandson, writes:

> I know the situation is not too unlike hundreds of others in a changing world. Families falling apart and little children losing contact with sometimes the only stable relationship in their lives. There seems to be no coordination between our States regarding this seriously overlooked problem. We worry that the court order we have here in California would not be worth a thing if our grandson were taken out of the State.

The costs involved in litigation was another common complaint. A letter from grandparents in Fullerton, Calif., who have been denied visitation privileges to visit their only granddaughter after their daughter died in 1981 wrote:

> We tried to get an attorney but he discouraged us by telling us it could cost up to $10,000 and we could not be assured of any results. We do not have this kind of money but whatever we have it will go to our granddaughter.

The son of a Lincoln Park, Mich. couple died in March 1977. Since then the daughter-in-law has remarried and adopted their grandson. They wrote:

> We have been in and out of the courts—and spent thousands of dollars on lawyers and still are not seeing our grandson.

The emotional strain of both, the lack of uniform laws and the cost of litigation was evident in almost all of the letters. There was a notable concern about the effect it was having on the children. A grandmother from Lansing, Mich. wrote:

> Our grandson is probably unaware of all our attempts to get him back. Gifts, letters and cards have gone unacknowledged. To me, this is child abuse.

A grandmother from Wheeler, Wis. writes:

> It took us 14 hard, long, and painful months to get to see our grandson after the divorce. We couldn't even stand to go into stores and look at children's clothes. It just hurt too much. Why should the grandchildren and grandparents pay for mistakes the parents make?

As I have stated before—our purpose today is to focus national attention—if you will—launch a national debate on the issue of grandparents and their visitation privileges to see their grandchildren in the event of a marital dissolution.

Our other purpose is to listen carefully to testimony on recommendations of experts and others concerned with this topic on the delicate issue of which level of government should assume responsibility for the enactment and enforcement of laws on behalf of grandparent visitation. It is evident that State governments have assumed some responsibility with 75 percent of them having enacted statutes. However, if there is in fact a Federal question involved we would like to know about it and then proceed in the usual bipartisan manner which characterizes our committee's work.

The only recommendation I do offer is, in order to bring a sense of uniformity to the 42 State laws which have been adopted, to

have the diversity-of-State-law issue be referred to the National Conference of Commissioners on Uniform State Laws for their evaluation and ultimate action. This non-Federal Government entity was established in 1892 and is vested with the responsibility to promote uniformity in State laws on all subjects where uniformity is deemed desireable and practical.

Let me close my statement with a poem that was written about an 82-year-old grandfather who has been denied the right to see his only granddaughter, Kim.

Grandpa, can I see you?
Could you take me to the fair,
Would you read me a little story,
And tell me that you care.

Grandpa, would you walk with me?
Or hold me on your knee?
I wish that I could talk to you,
Grandpa, why can't it be?

Grandpa, do you love me?
Yes, I love you too.
I dream of us together,
Do dreams ever come true?

Grandpa, I keep praying
We'll be laughing very soon
And someday we'll be singing
A simple little tune.

Grandpa, can I see you,
I know this isn't fair;
But things will soon be changing,
And we can be a pair.

Grandpa, we'll be together
Just wait a little while.
Grandpa, don't stop trying,
I want to see you smile.

—by Susan Vaughn.

I recognize the gentleman from New Jersey, Mr. Rinaldo.

STATEMENT OF REPRESENTATIVE MATTHEW J. RINALDO

Mr. RINALDO. Thank you very much, Mr. Chairman.

I want to take this opportunity to commend Chairman Biaggi for convening this hearing today, and also my distinguished colleague from New Jersey, Congressman Hughes, for initiating this hearing. I think the issue of visitation rights for grandparents and their grandchildren is a national problem, and as such deserves this type of national attention.

With our thoughts turning toward our families as the holidays approach, we are reminded that grandparents and grandchildren are indeed a vital connection. I was thinking as I was coming up to the hearing this morning of my own family situation. My father is retired now, just celebrated his 73d birthday. My mother does not tell anybody her age, but it is close to that. I know that I have a total of 10 nieces and nephews, and they just about live and exist for those children. He is in perfect health, but he will drive from Union, N.J. to Maryland to visit the grandchildren. He will call them up, and that is what they spend most of their time doing and they would rather do that than go on a vacation to Hawaii or anywhere in the world. I would just wonder what would ever happen

to them and to their lives and their willingness to even live if something happened where they were cut off and could not for one reason or another visit their grandchildren.

I recognize the problem. I also recognize that it is a widespread problem, and as a result of that at least four organizations have been formed to aid grandparents and their grandchildren in their quest to continue relationships threatened by death, divorce, or other family upheaval.

I understand that Mr. and Mrs. Max Chasens of my home State have founded a group called "Equal Rights for Grandparents." I am pleased that they are here today and are going to testify and tell us about their own personal struggle to see their grandchildren.

As grandparents assert their rights, it is encouraging to note that some progress has been made. According to an American Bar Association survey, 40 States, including New Jersey, have enacted laws to grant grandparents visitation rights under certain circumstances. Clearly, the States and the courts are beginning to recognize the psychological and social benefits coming from protecting and nurturing the relationships between grandparents and their grandchildren.

In any judicial proceeding there are competing parties with competing interests. Too often, in order to frustrate the award of a State decree granting visitation rights, the child's custodian may unilaterally remove the child across State lines. In order to deter this type of thing, facilitate the enforcement of custody and visitation decrees of sister States, and to promote secure and stable family relationships for the child, Congress passed the Parental Kidnaping Prevention Act of 1980. Now when a State's decree provides grandparents visitation rights, those rights are fully enforceable as a matter of Federal Law in the courts of any other State of the Union, so long as the requirements of the act are met. This act also authorizes the FBI to assist State law enforcement authorities in the investigation of interstate child-stealing cases.

Mr. Chairman, I am hopeful that by your taking the lead, by the initiative of Congressman Hughes in seeing to it that this hearing was convened, we will be putting the spotlight on the problem today. I am hopeful that our hearing will encourage enactment of grandparents' visitation rights statutes in the minority of States which do not have them. If it is appropriate for the House Aging Committee to examine this issue, as it is, from the perspective of the grandparent, perhaps it is equally appropriate for the newly constituted House Select Committee on Children, Youth, and Families to explore this problem from other perspectives when the 98th Congress convenes next year.

Given the vast variations among existing State laws on this subject, I join you, Mr. Chairman, in urging that the National Conference of Commissioners on Uniform State Laws also consider the issue. If it is appropriate, Mr. Chairman, perhaps we could send a letter, this committee, to the National Conference of Commissioners requesting that they take action. At this point I would like to request unanimous consent that we do that and have the letter prepared by staff and available for signatures by as many members of the committee as would be willing to sign it.

Mr. BIAGGI. You were not here, but clearly it was part of my testimony that indicated that is exactly what we are going to do. That is what I intend to do after the conclusion of this hearing.

Mr. RINALDO. I want to commend you for that action, because I certainly think it is appropriate, it is something long overdue.

I want to welcome the witnesses here this morning, and hope that your testimony will lead to the type of results that we all desire.

Thank you, Mr. Chairman.

Mr. BIAGGI. Thank you. Before I introduce my colleague, Mr. Hughes, let me say that what we see happening here is an area of neglect. It is really part of the aging problem, because the aged have been neglected traditionally, and more and more we have been focusing attention on their concerns. This is part of their concerns, and we are just catching up to this facet of their lives. There is no doubt in my mind that by having this hearing, focusing attention on this problem, working together and projecting it into the spotlight so that it would be given its rightful place in the minds and hearts of America, that there will be some response. It is really an extension of the aging problem. We have been fortunate so far in the progress we have made through the full committee under the chairmanship of Claude Pepper. This committee has been responsible for most of the Federal legislation that has redounded to the benefit of the aging.

I would like to introduce my colleague from New Jersey, Mr. Hughes. He has been a most valuable member of this committee, and has expressed early interest in this problem.

STATEMENT OF REPRESENTATIVE WILLIAM J. HUGHES

Mr. HUGHES. Thank you, Mr. Chairman.

Let me echo the sentiments of my distinguished colleague from New Jersey and the ranking minority member of the full committee, in saying thank you for scheduling this hearing. I too think it is a serious subject. I will make my remarks brief, because I know we are anxious to hear the witnesses.

The heartbreaking difficulties encountered by grandparents who attempt to secure the right to visit their grandchildren in the wake of marital dissolution were recently brought to my attention by Hon. Dolores Cooper, an assemblywoman from Atlantic County, N.J., whose testimony, unfortunately, we will not have the privilege of hearing this morning because business in New Jersey prevents her from being with us. However, we do have two very distinguished Atlantic Countians, Mr. and Mrs. Max Chasens, who have been involved with such a visitation case. I first learned of their plight a number of months back after talking personally with Mr. Chasens and seeing accounts of what occurred, and I became very interested in seeing the focus of a hearing spotlighted on this particular problem.

The termination of a marriage, whether it be a result of death, divorce, or separation, is a tragic event, especially if there are children involved. Magnifying the sorrow of this situation by destroying the precious and unique relationship between children and their grandparents is, I believe, something that should be avoided

if at all possible. At the same time, however, we must be sure to observe the delicate balance that exists between the best interests of the children, parents, and grandparents involved.

I am pleased that New Jersey is among the 38 States which now have statutes granting grandparents the right to petition the courts for reasonable visitation rights. I am concerned, however, over the disparity among these States, and the lack of similar statutes in the other 12 States.

I am confident that the distinguished witnesses we have here today will provide us with answers on how to best address the complex issues surrounding grandparents' visitation rights. I look forward to hearing their testimony.

I might say in passing that I too know that my own mother would be absolutely destroyed if she could not meet and love and understand and see her grandchildren grow and prosper. In my 25 years of practicing law, I think one of the most disturbing things to me was to see the breakdown in that relationship. It probably got to me more than anything else, because you could see the young people suffer because of that lost relationship. So I look forward to hearing the testimony. I have a statement that the Honorable Dolores Cooper has provided for us, and I would like permission to insert that into the record.

Mr. BIAGGI. Without objection.

[The prepared statement of Hon. Dolores G. Cooper, assembly woman, District of Atlantic City, N.J., follows:]

PREPARED STATEMENT OF DOLORES G. COOPER, ASSEMBLYWOMAN, DISTRICT 2 (ATLANTIC), ATLANTIC CITY, N.J.

Honorable Mario Biaggi, and members of the Select Committee on Aging: I am deeply grateful to all of you for giving me the opportunity to address you today, through the efforts of our Congressman William J. Hughes, an elected official sensitive not only to the needs of his constituents, but to all honorable people—in this case, the grandparents of the United States who are being denied the greatest reward of their golden years—the right to cherish and to love their grandchild or children.

However, the speaker of the New Jersey Assembly has called the final session of the legislature this morning, Thursday, making it totally impossible for me to be with you this morning inasmuch some legislation affects Atlantic City, Atlantic County was well as my co-sponsorship of several bills.

Therefore, I am requesting your permission to accept my humble testimony through Max Chasens, the first grandparent in Atlantic County who alerted me, more than two years ago, of this growing social problem, one which, obviously, legislation, as it presently exists in 38 States, has not found a satisfactory solution and must, as soon as possible, be guided by Federal guidelines issued to State legislatures.

We are aware if the growing divorce rate, with statisticians telling us that by 1990, one out of every two marriages will terminate in divorce, or, a complicated separation. Who bears the scars of this terrible statistic? Yes, a mother and or a father, the ex-husband or ex-wife, to an extent, but it is the child of this unhappy marriage. The grandparents—one, two, three or four persons who have given this child, or children, pure, unadulterated love. In the many cases that I have researched, I have found that the grandparent/parents have extended the only emotional stable relationship that the child experienced. Grandparents have become the confidantes, the substitute parents in many instances, and offered the child the only encouragement to look at life through normal eyes and emotions with love and compassion rather than the hatred and rancor experienced in the home.

Testimony has continued endlessly, and you have heard witnesses and presentations concerning the wretched experiences the grandparents have suffered at the hands of these vindictive ex-daughters and sons-in-law.

Now I request, members of the Committee on Aging, that you examine the laws of the 38 States who have some guidelines in this direction, and consolidate these diluted, antiquated pablum-type laws and statutes into strong, meaningful guidelines protecting the innocent and injured.

My dream is for creation of Federal guidelines handed down to the State judicial system creating firm, enforceable guidelines not to keep grandparents in limbo, or appearing constantly in court to explain their crime—the crime of wanting to see and touch a grandchild, to love and to cherish.

I am not a grandparent at this time of my life. But I hope that God will grant me that category some day. I have already shared the tears and heartaches of those who have such an abundance of love to give—don't deprive them of this one remaining factor in their life—the touch of the child, the sweetness of a kiss, the emotion of sharing—the generation of a name—

From the State of New Jersey, I gladly accept any responsibility in enabling you to make this dream a reality, and with wisdom, and God's help, show our love for the grandparents of the United States. Thank you.

Mr. BIAGGI. Mr. Shumway.

STATEMENT OF REPRESENTATIVE NORMAN D. SHUMWAY

Mr. SHUMWAY. Thank you, Mr. Chairman. I appreciate your convening this hearing. It is a very timely subject and most appropriate that we have an airing of it here in our Nation's Capital. I would like to welcome each of the witnesses on this panel and the panels that will follow and extend my appreciation for your being available and presenting testimony to us here today.

Mr. Chairman, the American family is both aging and changing, and I commend you and think it most important that we focus not only on grandparents but on intergenerational families. I look forward to working with you in the future, and I particularly would like to express the appreciation that I feel for the role that my home State of California has played in this subject. California has been on the leading edge in terms of both statutory change and case law in developing some innovations and new ideas on this subject. I hope that that particular process continues to unfold in California as well as in other States across the Nation. Perhaps what we do here today will be the impetus for that kind of action occurring.

I would like again to express my appreciation to you, and ask your permission to extend my full remarks in the record.

Mr. BIAGGI. Without objection, so ordered.

[The prepared statement of Representative Norman D. Shumway follows:]

PREPARED STATEMENT OF REPRESENTATIVE NORMAN D. SHUMWAY

Chairman Biaggi, I wish to commend you for convening today's hearing on Grandparents—The Other Victims of Divorce and Custody disputes. I want to welcome each of today's witnesses to the subcommittee and extend to you my appreciation for the enlightening testimony you will present today. Mr. Chairman, the American family is both aging and changing, and I commend you for focusing not only on grandparents but on inter-generational families. I look forward to working with you on a responsive solution to the plight of grandparents and the future of the family.

One of today's witnesses, Dr. Kornhaber, has characterized grandparents as emotional guardians of the young, as living ancestors who provide us with a sense of history and commitment to family roots. Grandparents are valuable mentors for teaching ethnic heritage, religious faith, and moral and cultural values to their grandchildren.

The pressures on today's extended family, such as the high incidence of divorce, job transfers and economic conditions, often victimize the most vulnerable members of society—children and grandparents.

Today the subcommittee will review judicial and legislative solutions to the problem of grandparent visitation rights. I trust that we will also look beyond legal intervention into family situations and consider efforts that would promote a greater public awareness of grandparenthood and inter-generational families. Hopefully, we will also look at the value of psychological research and family counseling as an alternative to judicial and legislative solutions. I trust that the subcommittee will also consider the symptoms to some of the major causes of this problem, such as the rapid rise in the divorce rate in the past two decades and the erosion of not only the extended family, but the "nuclear" family structure.

The problem with grandparent visitation rights occurs primarily in the event of death, divorce or separation of the parents. The rapid rise in the divorce rate during the last decade, especially in families with young children, results in injustices to the victims—old and young alike.

Before 1940, the divorce rate was approximately 2 per 1,000 in population. It reached a historic level of 5.1 per 1,000 in 1978. There were 1.1 million divorces and 2.2 million marriages in that year. It is not surprising that if this rate of divorce continues on a lifetime basis, the proportion of marriages ending in divorce may be close to 40 percent.

The impact of divorce is significant: the number of children involved in divorce tripled in two decades from 361,000 in 1956 to 1,117,000 in 1976.

The impact of the divorce rate has a great impact on the basic family unit. Since 1962 there has been a far more rapid increase in the number of 1 parent families than two parent families. By 1978, 19 percent of all families with sons and daughters under 18 years of age were maintained by 1 parent, 17 percent by the mother and 2 percent by the father.

I trust that the subcommittee will look at these demographic trends as they relate to the problems that grandparents are experiencing as family members.

Today we will hear testimony on legislative and judicial remedies to the problem. The State of California has had several significant court cases based upon common law as well as State statutory law that apply to grandparents visitation rights.

California was one of the first six States to enact statutes providing the legal means for grandparents to bring suit for visitation privileges. Currently, California law allows trial courts to award visitation to interested parties (including grandparents) if it is in the best interests of the child. California law also specifically allows grandparents and other relatives to seek visitation rights in the event of death of the parents.

Currently, 40 States have statutes conferring grandparents standing to seek court visitation rights under certain circumstances.

There is also great judicial awareness of the importance of existing associations and inter-generational contacts as in the best interest of the child.

In California, a series of cases have been decided on several emergent issues, such as the effect of adoption on grandparent visitation privileges, the impacts of animosity between the custodian and the grandparent seeking visitation, and the health and best interest of the child.

Mr. Chairman, I look forward to today's hearing and testimony from grandparents themselves, who will give us a first hand account of their experiences with this important issue. I look forward to working with Chairman Biaggi in developing an appropriate solution to the plight of grandparents in our society.

Mr. BIAGGI. The gentlelady from New York.

STATEMENT OF REPRESENTATIVE GERALDINE A. FERRARO

Ms. FERRARO. I want to congratulate you for holding the hearing. When I had my children I thought I had achieved the ultimate as far as family life was concerned, until my mother said wait until you are a grandmother. I do not want to hurry that, but I am waiting and I am looking forward to that day. We have talked about what occurs when grandparents lose the right of visitation and what effect that has on the grandparents. I received a letter from a constituent indicating what happens to the children. I would like to read to you one paragraph:

In so many cases with divorced children unforeseen hostility with one of the parents destroys family relationships and prevents needed contact and supportive warmth. Particularly at that time of disruptions children require as much reassur-

ance and cohesiveness as possible, and grandparents who nurture and give of their experience and wisdom are a vital factor.

Families are an integral part of society's salvation.

Sincerely yours, Edith L. and Henry W. Engel, grandparents of four—two we are devoted to and loved by; two we are fighting for visitation rights.

They bring the approach to the problem from the viewpoint of the needs of the child, and I think that is something that we must look carefully at. When families are disrupted, that is when children need that warmth and affection and understanding that grandparents can so readily provide.

I too congratulate you on these hearings, Mr. Chairman, and I look forward to hearing from our witnesses, particularly our witnesses from Queens County, N.Y.

[The letter follows:]

DECEMBER 12, 1982.

Congresswoman GERALDINE A. FERRARO,
House of Representatives,
Washington, D.C.

DEAR CONGRESSWOMAN FERRARO: May we urge you to address Congressman Mario Biaggi with respect to his serious consideration on Thursday, December 16, of the vital need for legislation on a Federal basis to insure Visitation Rights for grandparents.

In so many cases with divorced children unforeseen hostility with one of the parents destroys family relationships and prevents needed contact and supportive warmth. Particularly at that time of disruptiveness children require as much reassurance of cohesiveness as possible, and grandparents who nurture and give of their experience and wisdom are a vital factor.

Families are an integral part of society's salvation.

Sincerely yours,

EDITH L. AND HENRY W. ENGEL.

Grandparents of four—two we are devoted to and loved by; two we are fighting for visitation rights.

Mr. BIAGGI. Mr. Lantos.

STATEMENT OF REPRESENTATIVE TOM LANTOS

Mr. LANTOS. First, Mr. Chairman, allow me to make a personal observation. I have watched and participated in many congressional hearings over the last 30 years, but this is the first time I saw the chairman of the committee conducting the hearing fighting back his tears as he finished testimony. And I noticed that several people at the witness stand were doing the same. So was I.

We are dealing with an issue of monumental importance. Grandparents in many instances are the only stable unit in a family. And while the hearing is focused on grandparents and their rights, what we are really dealing with fundamentally is the grandchild, because my approach to this issue, which is an issue I have been deeply interested in for many years, is not from the point of view of the grandparent. All of us who are grandparents have had enough anguish and suffering in our lives, so we can take some more. But the injustice, the unfairness, the outrage of denying little children the love, the affection, the care, the concern of the grandparent is something that even a society such as ours—where the family has disintegrated to such an extent—should not allow.

Usually it is customary at the beginning of a hearing to be or to pretend to be open-minded. Usually it is customary to say that we want to hear and see all the evidence before we make up our

minds. Well, this Member of Congress has his mind made up. There is not the slightest doubt in my mind, Mr. Chairman, that strong Federal legislation is called for. I intend to pursue strong Federal legislation, and I intend to make that strong Federal legislation my top legislative priority in the upcoming session.

We are dealing with anguish and suffering ranging from the tiniest of grandchildren to the 82-year-old grandfather whose poem you read, and if this body is not prepared to address that issue, then our preoccupation with the nuclear freeze or the MX missile or the 5-cent gasoline tax will sound very hollow indeed.

Thank you very much.

Mr. BIAGGI. Thank you, Mr. Lantos.

We have the panel consisting of grandparents, and this morning one of our colleagues, a very outspoken and very concerned Member, Barbara Mikulski, is recognized.

STATEMENT OF REPRESENTATIVE BARBARA A. MIKULSKI

Ms. MIKULSKI. Thank you, Mr. Chairman. I am here to introduce one of my constituents who has been a leader in Maryland in organizing for legislative change to bring about grandparent visitation rights. In Maryland, women being outspoken is not limited to Members of Congress, but certainly more so at the grassroots constituency.

However, Mr. Chairman, I would like to thank you and this committee for convening this hearing and once again providing a national forum to people who have either been denied it or who have had to fight to get it.

If one takes a look at the men and women at the table today, you would see that they have probably had eight quarts of water waiting to talk. Are they nervous about speaking today? They are. Why are they nervous? Because these are people who are strong organizers and accomplished in their right. It is because they have been used to running into rejection, hostility, and the trivialization of their issue. They are so used to being in a negative environment that they think they are going to be grilled like ethnic hot dogs today. I have been telling them what a terrific committee this is, Mr. Chairman, your leadership and Mr. Hughes and others. The committee should be thanked enthusiastically for providing a forum for my constituents to tell their stories in their way.

Senator Rosalie Abrams, our majority leader, introduced legislation in Maryland in 1975 to deal with the issue. It was decided it was not as important as dealing with banks and land development and providing more and more opportunities for condo conversion. It was ignored as one of those silly family issues that we do not have to pay any attention to. But this is one grandmother who took her personal anguish and turned it into a grassroots action in Maryland. When I asked her what was the name of your group, she said, "I did not have a group, all I had was me, and I stood alone until the petitions, the buses started rolling to our State capital." This is the woman who singlehanded organized the grandparents——

Mrs. HIGHTO. With my husband.

Ms. MIKULSKI. With her husband. As we know, every good woman has a good man behind her.

Mr. BIAGGI. I thought the more contemporary view was that the man was beside her.

Ms. MIKULSKI. When we get the equal rights amendment, Mr. Chairman. That is the story of Mrs. Highto. I am pleased to introduce her to the Members of the Congress here today, because I know she is representative of many others. My own support for this legislation is just right there. When my mother had her triple bypass this summer and the family pitched in, it was her grandchildren from age 5 to 14 who were ready to move in with granny, help with the housework and do the errands. Whether you were 5 and could dust the baseboards or 14 and could run the errands, we were there.

Not long ago my house was broken into. It was not because they took the clock-radio or the TV that I was upset. They took things my grandfather had given me. What my grandfather gave me was more than a few coins. He gave me a sense of identity. He told me the stories of Poland and where we had come from. He taught where we had come from and what this country meant.

As a youngster I was working with my grandmother out of our ethnic baker shop. When I ran for Congress they said if you are half as good as your grandmother's cookies, you will be an excellent Congresswoman.

I treasure the relationship I had with my grandparents, and I can assure Mr. Rinaldo and other members of the committee, I hope to be on the Select Committee on Children, and then intend to pick this up from the standpoint of the children. But I can only say that you have my wholehearted support, and I know Mrs. Highto here will blast the networks right off because of what she has to say.

Thank you very much, and I look forward to hearing the testimony.

Mr. BIAGGI. Mrs. Highto.

PANEL 1—SOCIAL ISSUES, CONSISTING OF GERRIE HIGHTO, BALTIMORE, MD., MR. AND MRS. MAX CHASENS, FOUNDERS, EQUAL RIGHTS FOR GRANDPARENTS, MR. AND MRS. LEE SUMPTER, FOUNDERS, GRANDPARENTS/CHILDREN'S RIGHTS, INC., HASLETT, MICH., MR. AND MRS. HARVEY KUDLER, FLUSHING, N.Y., AND MRS. HENRY ENGLE, LARCHMONT, N.Y.

STATEMENT OF GERRIE HIGHTO

Mrs. HIGHTO. Thank you very much.

Honorable chairman and honorable members of the Select Committee on Aging, my name is Gerrie Highto. I am from Baltimore, Md. I am here to testify in regard to the areas of domestic human relations concerning the aging and the issue of visitation rights for grandparents.

The issue of grandparents' rights to visit with their grandchildren is one issue that has, unfortunately, been totally neglected. With the divorce rates exceeding 50 percent and where grandchildren are involved, some grandparents are completely shunted aside. Unfortunately, I know too many grandparents who are in this position today, simply because of the hostilities of the divorcing couple who use the children as pawns, in an effort to get even

with each other. This issue exists also among grandparents whose natural children, whether they be divorced or not, become angry with their own parents and they, too, will spitefully withhold the children from seeing thei grandparents. Another situation which involves grandparents, and this happens quite often, is the untimely death or disappearance of the noncustodial parent. When this happens, the custodial parent may, for whatever reason, withhold the grandchildren from seeing their grandparents, who have absolutely no rights whatsoever, and completely destroying the poor grandparents.

The churches, synagogues, schools, family and children services are keenly aware of this matter, but the only thing they can offer, depending of course on the State, is compassion for the grandparents. Is compassion to take the place of your feelings, your roots, the age-old dream of begging God to allow you to live your remaining years with your grandchildren? Some States have passed legislation allowing grandparents to petition the courts for visitation rights, and the decision is left to the discretion of the presiding judge. The Maryland State Legislature passed senate bill 333 sponsored by Hon. Senator Rosalie Abrams, who is the majority leader in the Maryland State Senate. The bill really is not strong enough. It should be much stronger if it is to be of any help whatsoever and not just to pacify.

Many people who are aware of the unique relationship between grandparents and grandchildren are trying desperately to involve them in everyday activities. Just recently my grandson's school initiated, for the first time, a grandparents' day, a day devoted primarily to the grandparents and grandchildren. The faculty were completely overwhelmed by the grandparents, who came out in droves, far exceeding their greatest expectations. It was a marvelous day. Both grandparents and grandchildren were so excited that it brought tears to the eyes of the participants, young and old alike.

I have found that whichever parent has assumed custody, in many cases, the noncustodial grandparents are often given a most difficult time. Unless you have experienced this personally or if it happens in one's family you cannot possibly know the heartaches caused by the cruelty, hatred, and vengeance manifested against grandparents by some custodial parents. It is unbelievable. This became an issue with me almost as a preventative one, while my daughter was going through a divorce. Also, a very close friend of mine and her husband—would you believe that they had to hide in bushes and foliage near the school that their granddaughter attended just so they could see her. They were not allowed to visit or even speak to her.

My involvement began when I read a newspaper article on the subject, which was very apropos. I immediately called the State legislature in Annapolis in an effort to find what laws the State of Maryland had regarding this situation. To my dismay I found that there was absolutely nothing on the books relating to grandparents. I did find that Hon. Senator Abrams had been sponsoring a grandparents' bill since 1975, and every year it was brushed aside as not important enough. I then spoke to the senator and offered her my assistance. With the aid of my husband, family, and friends

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we then took to the road. We proceeded to get petitions on a statewide basis, which I must admit was a very difficult job, especially as a daily routine. Fortunately, when people realized what was involved, they not only stood and waited to sign, but offered help of all kinds. Word spread fast and it was picked up by the newspapers and magazines in Baltimore City. The phone kept ringing continually with offerings to help. A restaurant called and asked us to send them petitions for their customers to sign. On the day of the hearing of this bill my husband and I rented buses to transport people to Annapolis. They filled so quickly that we had a cavalcade of cars follow us.

Mr. BIAGGI. Miss Highto, forgive me for interrupting, but those bells control our lives.

Mrs. HIGHTO. I thought I was getting the gong.

Mr. BIAGGI. No. The second ringing of those bells means we do not have much time, so we will have a temporary recess. We will resume as soon as we get back. We want to hear what you have to say, although I read what you have to say at 3 o'clock this morning.

[Recess.]

Mr. BIAGGI. The hearing is called to order.

Mrs. Highto.

Mrs. HIGHTO. I left off where I said that a restaurant had called us and asked us to send them petitions for their customers to sign. I found out later that they too were in the same position. Everytime we received several hundred signatures, they were Xeroxed and taken to every delegate and senator in Annapolis. It got to the point where I walked down that hall, I heard, "Oh, no."

At this stage of the game the State of Maryland had no laws which gave grandparents any legal or moral rights, and absolutely no recourse should the custodial parent refuse to allow them to see or even to speak to their grandchildren. I can assure you that the effect of this upon grandparents is complete devastation. I can assure you that you cannot imagine what effect that this would have and does have on a young child, especially if the child has spent a close loving relationship with his or her grandparents. What does a 5-year-old child think when he is suddenly cut off, as you sever an umbilical cord, from the most unselfish love he will ever know?

I can think of two of the most difficult and heartrending remarks. How would you feel if your grandchild looked up at you and said, "Grandma, why can't I sleep at your house anymore?" What can you say to this loving child after he has spent practically half of his life at your house? Then after a difficult time trying to answer, he bursts into tears and yells, "Nobody cares about me." I beg of you, is it not traumatic enough for a young child to be separated from one of his parents without shocking him further by alienating him from the unselfish love of his grandparents whom he has loved all his short life, thus giving him the feeling that no one cares for him. The frustrations of we grandparents are only overshadowed by the terrible injustices being done to children all over this country.

We almost faced this tragedy along with countless other grandparents and their grandchildren, who really need each other. How-

ever, as I stated earlier, Hon. State Senator Abrams, with our help, did manage to get the bill passed in the State of Maryland. As of now I understand that about 40 States have also passed some form of grandparents' visitation rights bill. I have no idea what these other States' bills contain, but I do think that if 40 States have passed a bill of this type, then the need must be real and on the ascension.

I believe a uniform Federal law should be passed protecting all grandparents and their grandchildren regardless of the reasons that brought about their children's separation or divorce. As a general rule, grandparents are the last people who want to see their children divorced, and suffer the most when it does happen.

I am well aware that many attorneys and judges are afraid that these bills will overburden the courts. If this is so, it will only prove that something must be done. If this issue really gets out of hand, then I strongly suggest that a committee be set up for this purpose, and since I have had firsthand knowledge of the situation, I would be delighted to serve on such a committee.

This bill gives the aged their moral rights and the children the unconditional love of their grandparents. Please, keep one thing in mind, we have chosen you to be our lawmakers, and we live by the laws you pass. In a sense, we are your suppliants and you are our conscience. If we cannot come to you for succor, then to whom shall we go? We are not radicals. We do not advocate radical law changes. We are human beings in the twilight of our years seeking what little happiness we garner from our grandchildren.

My personal views on the subject may be redundant to some of the above, but, nevertheless, I would like to say that we do not wish to overburden the courts but to produce a generation of children who will have real roots and stability. We provide a support system and another means of identification when such a trauma hits. We as grandparents give the gift of self-worth, the gift of caring, the important gift of heritage, the gift of special memories, the gift of sharing experiences, and last but by no means least, the gift of love and acceptance. A child needs a sense of continuity, especially with the divorce rate being upward of 50 percent in this country. Let us not forget that we are their roots and do what we can to protect them. Remember, for whatever reason a marriage terminates, there is no such thing as an ex-grandparent.

We have already asked God for his help, now we ask you for yours. Remember, where would we all be if it were not for our own grandparents? There is no love that can replace the very special love of the grandparent and the grandchild, and how sad it is for the grandchild who never knew or does not remember his grandparents.

I thank you for your most kind attention.

Mr. BIAGGI. Mr. Hughes.

Mr. HUGHES. Mr. Chairman, I am pleased to introduce and welcome to the committee my constituents, Mr. and Mrs. Max Chasens, who have had a terrible, heartrending experience in their own right. They have actively pursued visitation rights through litigation. They have founded an organization, Equal Rights for Grandparents, to try to do something about what is indeed a national problem. I am privileged to welcome them here today.

Mr. Chasens.

STATEMENT OF MR. AND MRS. MAX CHASENS

Mr. CHASENS. Mr. Chairman, I know all the attention is well meaning. Our tale of woe is no different from any other grandparent. We lost our daughter, and we do not want to lose our granddaughter.

I submit in evidence a letter, rather a newspaper clipping, that Alice Eckerson wrote. I think it tells the whole story, and I would like to——

Mr. HUGHES. Mr. Chairman, it is an article written by one of our fine reporters for our newspaper circulating in the south Jersey area. I ask that it be included in the record.

[The clipping follows:]

[From the Press, (Atlantic City) Apr. 13, 1982]

GRANDPARENTS FIGHT FOR VISTING RIGHTS

(By Alice Eckerson)

Courtroom B, 10 a.m.: Lawyers, judge, and litigants are locked in an emotional battle over a 7-year-old child. The plaintiff wants to see the child; the defendant, who has custody, says no.

But this is not a custody battle between parents. The plaintiffs in this case are the child's grandparents. Like thousands of other grandparents across the country, they are not allowed to see their grandchild. Unlike most, however, they are fighting that decision in court.

Max Chasens of Margate is such a grandparent. The retired businessman spent seven years in Atlantic County courts and more than $18,000 to get the right to see the child of his daughter, Vicki, who died eight years ago.

"We lost our daughter; we didn't want to lose our grandaughter, too," said Chasens who filed suit in 1975 after his former son-in-law refused him permission to see his granddaughter. After seven years of interim orders for visitation and other court actions, the Chasens were granted the right to see their granddaughter, now 10.

But Chasens is not happy with the decision because it does not set specific times for visits. And he thinks it is ridiculous that a grandparent should have to spend $18,000 to be allowed to see a grandchild.

As a result, he founded an organization, Equal Rights for Grandparents (7408 Ventnor Ave., Margate, 08402), to lobby for laws more favorable to grandparents and to help others who have been denied the right to see a grandchild.

"This is everybody's cause, not just mine," he says. "Not many older people can afford the luxury of going to court like I did."

Like Chasens, angry grandparents in other areas have united in such groups as Grandparents Anonymous, Grandparents-Childrens Rights, the Society for Grandparents and the Foundation for Grandparenting. Like Chasens, most activists think there should be a uniform national law that spells out specific grandparent visitation rights.

Becoming a grandparent is an honored tradition that Superior Court Assignment Judge Philip A. Gruccio calls "a blessing." When the expected relationship is impeded by circumstance or animosity, however, grandparents had no recourse until recently when they began turning to the courts.

"We have seen an increasing number of grandparents (coming to court) either because of divorce or the death of a parent," Gruccio says. "Generally, they have rights and (can have) visitations."

Pity the poor judge, however, who Solomon-like, must carve up a child's time between warring factions that have difficulty passing a civil word between them. The best solution, according to District Court Judge Richard Williams who heard Chasens' suit, is one worked out not by the judge but by the litigants.

"When the parents and grandparents fight . . . basically it is the child who gets hurt," he said. "The best were can do is choose the course that is least detrimental to the child."

That many older Americans are strangers to their grandchildren is undisputed. Often the reason is distance; sometimes it is lifestyle. The primary cause for es-

trangement between the generations, however, is divorce and death of a natural parent.

The reasons for such decisions vary from honest disagreement about the grandparent's role or behavior to bitterness and mutual dislike. Whatever the reason, the results can be tragic both for the grandparents and the child who psychologists say, are better off spending time with a grandparent.

"Something terrific happens between a grandparent and grandkid," says Arthur Kornhaber, a New York psychiatrist who wrote "Grandparents/Grandchildren, The Vital Connection." "Grandparents add another dimension to their grandchildren's lives."

Grandparents give their grandchildren unadulterated doses of love and care which they do not have to earn—a developmental bonus that should not be underrated, Kornhaber says in the book. The good flows two ways, he says, because the relationship makes grandparents feel loved and needed when society and their own children may no longer need them.

The doctor feels so strongly that the older and younger generations should be together that he sometimes testifies in court for grandparents suing for visitation rights.

"Grandparents and grandchildren have a specific bond between them; is second only to the emotional bond between parent and child." he says. And no child should have to choose between parents and grandparents.

"Optimally, grandparents and children should have free access to one another and should live nearby," he says.

He recommends that families who cannot work together get a minimum of 15 hours of joint counseling. Kornhaber founded the Foundation for Grandparenting (R.R. 1 Waccabuc, South Salem N.Y. 10590, 914-736-5478).

When grandparents are denied access to their grandchildren, the solution, increasingly, is the courts. No one thinks it's a good solution.

As one grandfather put it: "How do you regulate love; it's impossible."

However, a grandparents' "right" varies from state to state and often requires money, time and tenacity to enforce—something the reformers want to eliminate. Chasens says he spent more than $18,000; another grandfather says he spent $6,000.

In New Jersey, state law grants visitation rights to the grandparents of a minor child whose parent or parents are deceased, divorced or separated. However, that law, statute 9:2-7.1, gives the granting of that "right" to the judge who is instructed to make that decision "as the best interests of the child may require." This does not mean the best interests of the grandparent or parent.

Still, what's "best for the child?"

Everyone has a different idea. The dispute may be sincere or may be prompted by dislike and distrust between the generations.

For instance, a mother with custody may deny her ex-husband's parents permission to see their grandchildren because she disapproves of their religion, their morals or their attitudes. Or she may want revenge for real or imagined insults by the parents or her former husband.

In another case, a widower who remarries may choose to cut all ties with the natural mother's family. A step-parent who adopts a child may resent reminders of the natural parent. A father may honestly think the grandparents are a poor influence on the child.

Paul D'Amato, an Atlantic City attorney, has sympathy for the judges who, in the face of rancor and disagreement, must resolve the conflicts.

"They realize that no matter what happens, no one is going to be happy," he says. "If the child or children are mature enough that they can express an opinion, the judge will (interview them before deciding)."

Because the courts often decide visitation with grandparents is good for the child despite the objection of a natural surviving parent, the question becomes how much visitation.

"A couple times a week, overnight, a couple times a month? How much is enough? I believe a grandparent should have an active role in the life of a child," D'Amato says from the view of his Italian-American heritage. ". . . but not everyone agrees with that philosophy. It's a very difficult job that a judge has to determine the balancing."

More than 40 states now have laws giving grandparents specific rights that vary from visitation in divorce cases to visitation with the children of a deceased child. Some extend the visitation right to other relatives. In some states the law makes it clear that adoption does not terminate a grandparent's right to visitation.

Frequently, only the grandparents who were closest to their grandchildren and, therefore, have the most to lose, invoke the law when they are denied access to

their grandchildren. But, according to Lee Sumpter of Michigan who founded Grandparents-Children's Rights Inc., (5728 Bayonne Ave., Haslett, Mich., 48840, 517-339-8663) many grandparents are afraid to come out of the closet.

"They are afraid to make waves," he says, "because if they do, they may be denied visitation rights altogether."

Others, he says, are ashamed.

"They think they are the only people who have the problem."

Often, these are the grandparents who cared for their grandchildren for months or years before a natural mother or father reasserted parental rights and cut off the grandparents relationship with the child, Sumpter says.

"Sometimes, it's a live-in girlfriend or boyfriend who denies visitation. . . . Sometimes, it's because of a custody fight between parents . . . or because of a divorce. . . . or they don't let you because somebody looks crosseyed at somebody else."

Whatever the reasons, the consequences are endured by grandparent and grandchild alike.

"It is slow torture (not being able to see a grandchild)," Chasens says. "Nobody knows what it's like. Something should be done for all grandparents."

Sumpter concedes there are some grandparents who should not be allowed to see their grandchildren.

"But most of them are more than worthy," he says. Kornhaber says dislike between grandparent and parent is not a valid reason; only grandparents who are mentally ill or very physically ill should be kept from their grandchildren.

With more and more children being raised in single-parent or step-parent families, the bond between the generations should be encouraged, say the activists for grandparent rights. Grandparents and grandchildren, they say, have everything to gain by being together.

Mr. CHASENS. Nobody makes you a grandparent. You have paid your dues to society. When asked in court, we have gone through so many pages of deposition, I want to impress you, I have dragged this thing from one room to the other, and here it is, almost 15 pounds of deposition, court orders. We have been in and out of court, and it is heartache and aggravation, and has deprived us of the most precious thing of our lives, our grandchild and visitation rights.

We have been to Judge Francis, and we had to go there because of a letter sent to us by my ex-son-in-law, who remarried and took it upon himself to restrict us as far as visitation rights are concerned. We do not know why. However, we had to go to court, and I feel sorry for the people in New Jersey, the visitation rights are very, very limited in New Jersey. In fact they are third-rate, and we would like to see them updated or something done nationally.

Judge Francis in his infinite wisdom saw we needed visitation rights and he recognized the need for that, and he gave us the first Sunday of every month and a telephone call. We got the child from 10 in the morning until 7 o'clock at night. We had to go back in court, and part of the deposition, they violated the court order. We went in front of Judge Grucio, a family-oriented man who understood our plight, and he said there is no evidence where the child is unhappy with her grandparents. Instead of fining them monetarily, I do not see why the child cannot visit with the Chasens from 4 to 7:30, and also the first Sunday of every month on a flexible basis. That would be on Wednesday, and if this continued, fine. This continued for 3½ years, and this was pendente lite and the trial came up——

Mrs. CHASENS. It was December and January. It was finished January.

Mr. CHASENS. I can say unequivocally, and I have stated in my articles, if you are in front of a compassionate judge who under-

stands your plight, I do not care, you can have a young clerk in there pleading your case, you will win. I could have had Louis Nizer, F. Lee Bailey, Mr. Garrison, and I went in front of a young judge, Richard Williams, and he did not understand our situation. He could not hang his hat on anything in the New Jersey law. All the pleadings and animosities that went on between us and the ex-son-in-law and the new mother, it is ridiculous.

In deposition my attorney came up and said, "What is your feeling, Mr. Baylon, as far as the Chasens are concerned? You said in 1976 you did not care whether they live or die." It did not bother the judge. On deposition again he said, "How do you feel about them today." My ex-son-in-law said, "If I saw their names in an obituary column it would not bother me."

Now, you cannot use a child as chattel. First and foremost, we must be gentleman and ladies, law-abiding citizens, honest, sincere, with the utmost respect for human dignities. Otherwise you cannot be a judge. I served in the Army. I took my orders, but if this is what our courts do and this is what we have to go through as grandparents, the fabric of our society is going to decay. It seems it is good against evil, and evil prevails. We have to go to court time and time again. It is not right.

I feel sorry for those people who cannot afford the money to squander for courts and court orders. We could have made an appeal, $8,000 more. Who in the United States, who in this country would challenge people, and I am sure people of lesser means love their grandchildren almost as much as we do. The cruelty that we went through and the humiliation is a sin against God and country. I can see it no other way.

It is mental cruelty, child abuse, all these things have been repetitions. The chairman stated most of them. The other people on the panel will give you the same song, it is cruel. But the worst part of it is this is what your life is about. I have been in business, lost money and made money that rightfully belongs to me. I should not have to go to court and be deprived of my bloodline. We are victims of the feelings and emotions of one judge against another. That is why we are here today, to solve this problem.

We pray we set an example here for all grandparents. Every time a child is born, so is a grandparent. There is no denying that she loves us and we love her. It is part of our heritage.

I made a chart. I asked what is your idea of a grandparent. When you are a parent it is 80 percent work and 20 percent pleasure. When you finally achieve the blessing of being a grandparent, it is a blessing, but to be a great-grandparent is a miracle.

My mother-in-law was 81, passed away recently, could not have the pleasure of seeing her great-granddaughter. Now that is cruel. You can do many things, but the fact that you have something that you cherish and you see and it reflects in your life and your being, you should not be deprived of it. We represent all grandparents and are making a plea on their behalf. It is a moving subject. I do not know how I could empty my heart out to you people anymore. It just takes a judge with kindness, consideration, that is all you need. Ninety-nine percent of the people agree yes, I never heard of anything like this. And as I say to you, we do not have a patent on brains, I do not think you have, but somewhere, somehow, some-

body has a better solution than 15 pounds of deposition, $18,000, court costs, aggravation—you do not know what it means. Every time we had to go on a court order, the child was supposed to be there on Wednesday. If I saw her away from home at school, we were punished. The child was instructed to run away. The child is happy with us. I am making this appeal on behalf of all grandparents. We are not selfish. It is 8 years of aggravation, we advanced backwards because of the Jersey law. God bless you in your efforts.

Mr. BIAGGI. Once again we have a short recess. I tell you, Mr. Chasens, we are aware. I think Mr. Lantos said it clearly. We are not here with open minds in a sense, we are here to find a solution. We know the problem. I will tell you this, I have been here 14 years, and this is the most emotionally strenuous hearing that I have ever participated in, and I just do not look forward to hearing the rest of the testimony, frankly. I will be here, but I do not look forward to it.

Mr. CHASENS. May I apologize?

Mr. BIAGGI. No need to apologize.

Mr. CHASENS. If I have said anything——

Mr. BIAGGI. You do not have to apologize. You said it most eloquently and most impressively.

[Recess.]

Mr. BIAGGI. Mr. and Mrs. Lee Sumpter.

STATEMENT OF MR. AND MRS. LEE SUMPTER

Mr. SUMPTER. Mr. Chairman, members of the committee, we deeply appreciate the honor you have given us today. I have tried to answer the information that was given to us in a letter and avoided repeating what we sent to you beforehand, so there will not be much repetition here.

Grandparents—Children's Rights, Inc. was incorporated on July 8, 1981, by Lee and Lucile Sumpter, and an interested grandmother who does not have a visitation problem. It is a nonprofit Michigan corporation.

Its goals are to seek adequate laws to protect the visitation rights of grandparents and children in every State, and to organize active contact groups in each State to work for a national children's rights law.

It gathers information to share with concerned grandparents and others in the 50 States. To date we have received 844 letters or telephone calls from 48 States. One grandmother telephoned from Ontario, Canada, and a father wrote from Venezuela.

There are no rules or dues involved, and we are usually available 24 hours every day.

We have been contacted by 42 organizations, television networks, radio stations, local and national newspapers and magazines.

The Family Weekly article, "Visitation Rights for Grandparents," written by Roslyn Kramer and Dolores Walker that was published in the western States on November 29, 1981, and again in the remaining States on December 27, 1981, caused us to receive 652 letters and telephone calls.

I will divert to the map here. It seems everybody wants to know what it is all about. I started that because of the Family Weekly

article and as time went on I added more pins to represent the number of letters we have received from other grandparents not connected necessarily with the article, and there are 844-some-odd pins in that map. As of the Family Weekly article, California led the pack with about 70 letters, and Michigan was second. I do not have all the pins in the map that indicate the number of grandparents who have a problem from Michigan, because there really would not be enough room for the map. There are about 200 of them. I wanted to apologize to Mr. Hughes because I had to put him out in the Atlantic Ocean. New Jersey was not big enough to represent everyone.

The blue pins indicate States who do not have visitation laws, including Washington, D.C., right here.

I have just been handed a document from the Family Law Reporter representative who says that five more States have enacted laws of some kind, so that makes 45 States who have laws, and 7 who do not. No, five who do not. I will continue with my testimony here.

Thousands of children have been placed in the care of paternal or maternal grandparents from *x* number of months to *x* number of years by parents who could not look after their children for many reasons. The children and their grandparents develop a close and loving relationship.

One form of abuse is when these children are suddenly uprooted from a secure environment and they are placed in a strange and insecure situation. They are almost immediately prohibited from associating with their grandparents in any way. The grandparents have reached a point in their lives where the denial of seeing a grandchild is an emotional trauma. It is usually unexpected, unexplained, and indefensible. The children are confused because they do not understand why they cannot see or talk to their grandparents. They develop mental and emotional problems because they cannot fight back, and they have no one to defend them. There is no place for a young child to go to for help.

Grandparents can readily detect child abuse, and they could prevent much of it if social service agencies and child abuse centers would respect their reports. Courts habitually place abused children in foster homes rather than with grandparents with whom the children desire to live. The courts usually claim that the grandparents are too old to look after the children, yet these same grandparents were not too old to babysit for free for years.

The denial of visitation or token visitation with humiliating limitations destroys all semblance of family life. All relatives are affected—parents, children, grandparents, aunts, uncles, cousins, and even close friends. It affects your mental processes, health, and ability to function normally. Unless you have personally experienced this heartbreaking phenomenon, you cannot understand or comprehend the extent of the damage it causes. Peace must begin with people—children are people. What is their adult generation going to be like when child abuse is at an epidemic level now?

Any involved grandparent will gladly tell you their problem in a private conversation. If many of them go public there are several things that might happen:

One, it will harm their litigation if they are fortunate enough to be engaged in such.

Two, if they have any visitation at all, it will be cut off, and they are so informed.

Three, if they do not have any visitation, they know that they will never obtain visitation if "they make waves."

Four, many parents inform the grandparents that they will leave the State if any effort is made to get visitation. Many parents do move to States that do not have adequate laws.

I believe that reciprocity is not common in very many States, hence a national law would indeed help if each State elects to adopt it. All of our knowledge about this problem comes from personal experiences in our family, in the families of our close friends, and from the hundreds of grandparents who have written to us. All of the problems are similar—some are more heartbreaking than others. We will not stop striving for normal relations between grandparents and their grandchildren and other children's right until we get too old to work or run out of money.

We have received letters on the same day from Maine, Florida, California, Washington. These people did not know each other, they did not know they were writing us or writing anybody else for that matter, but the story is the same, Kansas, Missouri, anywhere you go, the letters read the same.

Grandparents, who have been informed about the hearings that are being held this morning, hope and pray that an adequate national law will be enacted soon enough for them to celebrate a merry Christmas with their grandchildren before they are too old to share this blessed holiday. Many grandparents are even denied the right to send cards or gifts to their grandchildren.

How would you feel if you were told that you could see your only grandchild for 2 or 3 hours on Christmas Eve—that it can never come back to your house, yet that same parent has placed this child in your care for 5 of its 10 years on this Earth? The grandchild lives 500 miles away from you, and the parent expects somebody to drive that far for 2 or 3 hours on Christmas Eve.

Thank you, sir.

Mr. BIAGGI. Thank you.

[The prepared statement with attachments of Mr. and Mrs. Sumpter follows:]

PREPARED STATEMENT OF MR. AND MRS. LEE SUMPTER, GRANDPARENTS—CHILDREN'S RIGHTS, INC., HASLETT, MICH.

Grandparents are and always have been a vital link in our society. They are the unwritten history of our families, towns, states and nation. They are the unrecognized therapy that our children need. They are the safety valves for the troubled families, and the cheering section for everyone's progress. Grandma and Grandpa are the repository for tall tales, good advice, dubious guidance depending on who asks for what and under what circumstances.

Our very limited experience with grandparenting has shown us that grandparents are very disturbed if they do not or can not function in this rightful role. I strees rightful simply because we believe that grandparenting is a Right and not a privilege. The judiciary in our country does not have a very good concept of the rights of grandparents. After reading many case histories of grandparent visitation court decisions, gathering information from hundreds of letters and comparing similar experiences with other concerned grandparents across the states, the courts strongly agree that grandparents have no rights.

How much of this heartbreaking dilemma that has been created is our fault? We choose to believe that the majority of the grandparents have been unjustly denied the right to visit their grandchildren. Dr. Arthur Kornhaber, co-author of "Grandparents—Grandchildren, The Vital Connection", has evidence that some grandparents do not care to see their grandchildren, and this is very difficult for us to understand, but we do admit there are grandparents who should not associate with their grandchildren because they do upset the equilibrium of families and they create senseless problems. Time, distance and economic play a big part in restricting frequent visitation, and anyone can accept those reasons for not being able to visit grandchildren.

We must establish a basis for our visitation problems. A child is brought into the world, and normally both parents share their love with it. Because of death, divorce or separation, one parent is gone. The remaining parent takes the child to live in the home of maternal or paternal grandparents where they may remain for months or for several years. Because the parent may be away during most of the child's waking hours of the day, the child will develop a secure and loving relationship with its grandparents who care for it. Later the parent will take the child to live with a step-parent or a live-in girl or boy friend. The step-parent or friend will decide that the child is not to visit the grandparents anymore. "Why", you ask? We do not know. They do not know, or they will not tell you. We believe that they are jealous of the child's love for the grandparents. The parents are insecure and immature. In many cases they are self-centered, selfish, egotistical and mentally ill. They have no deep love for the child, and do not care that it is being deprived of a loving relationship with its grandparents. The child has no rights either.

We have developed several categories of grandparents who are being denied visitation with their grandchildren. Circumstances are created which lead to denial based on divorce, death of one parent, a custody battle with one parent denying one or both sets of grandparents, live-in partners deying one or both sets of grandparents, outright denial of visitation without any reason, and cult membership. The step-parent adoption is the most vicious because judges are telling the grandparents the children have too many grandparents, or that, they the grandparents have no rights. These grandchildren are the blood relatives of the grandparents.

There are three stages grandparents involuntarily experience when told the glorious news "You can't see them anymore." You are shocked, really can't believe what you are hearing. Especially if you have had a loving relationship with the child for x number of months or years. Next, self-pity sets in, or what did I do to my children to make them treat me this way? After you realize that you did not do anything, you get angry. This anger becomes a permanent state of mind. It will not go away, and it is not a hate feeling, but a seething frustration. Every time another confrontation occurs, that incident merely fuels the anger.

We have a very difficult time finding grandparents with a visitation problem. Many are reluctant to speak about it because it is a family problem, they are ashamed of it. Many do not consider that anybody else could have the problem. And third, if they are having any contact with the children at all, they are afraid that if they make waves they will be cut-off completely. We have been told this by lots of grandparents. Grandparents cannot go public, cannot go to court, and in the process go through considerable humiliation at the hands of their children. These parents grew up in the sixties and seventies. They want it all their way, want it now, and finally realize that adulthood is too much for them. The run the full range of mental disorders from chronic manic depressives, to schizophrenics, to paranoids, and ego maniacal selfish immature people.

The grandparent visitation problem is a national disgrace. Forty states have laws in varying degrees allowing grandparents access to courts to petition for visitation. We have copies of all forty state laws and are constantly updating them. In the past four years, eighteen states have passed legislation in some form. Dr. Kornhaber recommends mediation on a mandatory basis of eighteen to twenty-four months. We know that this is the best solution. The courts do not have the expertise to handle family matters. Divorce, yes for the adults, but who thinks or cares about the children. The mediation recommended must be backed by law, required by law, and administered by the law. Grandparents are ignored by the judiciary. Parents lose their children and grandparents are not allowed to adopt, have custody, or even visit. The worst circumstance is adoption by step-parents. Many state laws prohibit grandparent visitation after adoption. Children that are being emotionally, mentally, physically and sexually abused are usually being denied the right to see their grandparents. Children as young as 4 or 5 years old try to run away to the homes of their grandparents for safety. Younger children are also committing suicide.

The mediation panel would consist of professional people in the medical, social sciences, and mental health fields. We might have to launch the concept as an adjunct to a court. The children would certainly be a part of the process.

The state laws dealing with visitation are widely divergent. Some allow for visitation based on the death of a parent, a custody case, or in a divorce. Some states combine all of these in one law. One state allows grandparents a voice in the adoption procedure. Pennsylvania has a law to cover all categories of grandparents mentioned earlier, and for all situations now prohibiting visitation. Delaware has five sentences in its law, and it covers the entire problem.

Grandparents-Children's Rights, Inc. is actively assisting involved grandparents in each state to seek adequate laws to protect the visitation rights of grandparents and children, and to organize active contact groups in each state to work for a national children's rights law. A national mailing list is being compiled to allow grandparents to share information. We must be able to communicate with one another across town, county, state and nation. We have received 820 letters and telephone calls from grandparents, 94 letters from professional persons and others who are interested in this problem. Eight negative letters have been received from parents and others who resent what we are doing. If we are to have a national law, we will need much help from concerned grandparents and their friends in every state to lobby for this badly needed law. As we travel in different states, we call grandparents who have not added their names to the mailing lists, and we also talk with those who are against visitation laws. We need one contact leader in each state. One grandmother in Illinois worked alone for two and one-half years to lobby for a law before she found out there were 40 more grandparents in Illinois who had similar problems. It will take much time, effort and money to obtain a national law, and every grandparent is indebted to Dr. and Mrs. Kornhaber for the time, work and money that they have donated to this problem and for founding the Foundation for Grandparenting.

I would like to close by telling about a young mother who lives in Detroit. She telephoned us to please find some grandparents who would allow her to legally adopt them for her three small children. She also wanted the name of a lawyer who would take her case. The children's natural grandparents did not want to be bothered with their own grandchildren. We have sent letters to the Michigan mailing list to try to find grandparents for those children.

December 1982

This compilation indicates the categories that grandparents may petition their state courts for visitation rights otherwise denied to them by members of their immediate family or by others.

I. Reasonable visitation rights of any maternal or paternal grandparents.

1. Connecticut
2. Delaware
3. Idaho
4. New York
5. West Virginia
6. Pennsylvania

II. The court has jurisdiction to grant visitation privileges to grandparents or to anyone else when it deems such privileges are appropriate.

1. Hawaii
2. Missouri
3. Nevada
4. Ohio
5. South Carolina *
6. Utah
7. Virginia *
8. Washington

III. Visitation rights of grandparents involved with death, divorce or custody.

1. Alabama
2. Alaska
3. Arkansas
4. California
5. Colorado
6. Florida *
7. Georgia *
8. Illinois *
9. Indiana *
10. Iowa
11. Kansas *
12. Louisiana *
13. Maryland *
14. Michigan
15. Minnesota
16. Montana
17. New Hampshire
18. New Jersey
19. New Mexico
20. North Carolina *
21. Oklahoma *
22. Oregon
23. Rhode Island
24. Tennessee
25. Texas
26. Wisconsin

IV. Pending legislation

1. Arizona
   (Maine and Mississippi plan to introduce grandparent visitation bills in January, 1983.)

V. No laws or pending legislation.

1. Kentucky
2. Maine
3. Massachusetts
4. Nebraska
5. North Dakota
6. South Dakota
7. Vermont
8. Wyoming
9. Mississippi
10. Washington, D.C.

*Improved a law in 1981 or 1982

If you need a copy of the law, write to:

Ask for a copy of any law or pending legislation that might have concerning the visitation rights of grandparents.

GRANDPARENTS -- CHILDREN'S RIGHTS, INC.
5728 Bayonne Avenue
Haslett, Michigan 48840

Contacts

Arkansas

Sharon Pallone, L.H.D.
SCAN AMERICA, INC. (Suspected Child Abuse and Neglect)
P.O. Box 7445
Little Rock, Arkansas 72217
1-800-643-8764

California

Vivian Doerlng
King Features Syndicate
P.O. Box 591
Escondido, California 92025
714-746-0970

Ed Kiester
"Family Circle Magazine"
1196 Hamilton Avenue
Palo Alto, California 94301
916-567-1089

Gerald Tellers
c/o Family Counseling Services of the Superior Court of California
325 S. Melrose Avenue
Vista, California 92083
714-758-6526

Mr. Tellers wrote: "I had never heard about this problem until I read the "Family Weekly" article.(87 letters and telephone calls have been from Calif.)

Stepfamily Association of America, Inc.
900 Welch Road, Suite 400
Palo Alto, California 94304
415-328-0723

or 3001 Porter Street, N.W., No. 101
Washington, D.C. 20008
202-966-1258

Colorado

Margaret Carlin
Rocky Mountain News
Denver, Colorado
303-892-5321

Barbara McCormack
Dept. of Human Development and Family Studies
Colorado State University
Fort Collins, Colorado 80523

Dave Siriani
Fathers for Equal Rights
3016 Ivy
Denver, Colorado 80207
303-333-3773

Washington, D.C.

Helen R. Graham
National Committee for Adoption
Suite 326
1346 Connecticut Avenue N.W.
Washington, D.C. 20036
202-463-7559

Georgia

Mike Goldgar
Grandparents Day
P.O. Box 490022
Atlanta, Georgia 30349
404-487-9662

Illinois

Phil Donahue Segment of the Today Show
c/o W G N - T V, Attention Sheri Singer, Producer
2501 Bradley Place
Chicago, Illinois 60618
312-883-3427

The Honorable Donald W. Dean
State Representative
426 South John Street
Bloomfield, Indiana 47424

Kansas

The Honorable Anita Niles
State Representative
Route 2
Lebo, Kansas 66856
316-256-6262

Massachusetts

Massachusetts Parents Anonymous
Statewide Resource Office
120 Boylston Street
Boston, Mass. 02116
800-882-1250 (Toll free only in Mass.)
617-482-4695 c/o Julie

Michigan

Gene B. Wilson, Director
Ann Arbor Public Library
343 S. Fifth Avenue
Ann Arbor, Michigan 48104
313-994-2333

Margaret Bubolz, Ph.D.
College of Human Ecology
Michigan State University
East Lansing, Mich. 48824

C.H.I.L.D. (A Committee to Help Institutions Litigate Divorce. The primary concern is with the best interest of the Child)
Bob Allers, Ph.D., Chairperson
8770 Jewell
Comstock Park, Michigan 49421

Luella Davison
Grandparents Anonymous
536 W. Huron
Pontiac, Mich. 48053

FATHERS FOR EQUAL RIGHTS OF AMERICA, INC.
Alan Z. Lebow, Executive Director
Wayne-Oakland-Macomb Chapter
30233 Southfield Road, Room 208
Southfield, Michigan 48076
313-354-3080

"K I N D E R" (Kids in Need Demand Equal Rights)
Renee' Patten
177 Lincoln Court
Rockford, Michigan 49341
616-866-0441 (8:00 A.M. to 3:00 P.M.)

Mrs. Leslie Campbell (Parent of a Snatched Child)
S.W. Michigan Friend of Child Find
10937 Red Arrow Hwy.
Mattawan, Mich. 49071
616-668-3733

Phyllis C. McMillen
Attorney at Law
Senior Citizen's Law Center
Genesee County Legal Aid Society
352 S. Saginaw Street 4th. Floor
Flint, Mich. 48502
313-234-2621

Newsweek
Mr. Gibney, Detroit, Mich.
313-259-4833

OSA (Office of Services to the Aging
300 E. Michigan
P.O. Box 30026
Lansing, Mich. 48909

STEPFAMILY ASSOCIATION OF MICHIGAN-OAKLAND COUNTY, INC.
1366N. Fairview Lane
Rochester, Mich. 49063
313-642-2340

Gary Stollak, Ph.D.
Department of Psychology
129 Snyder Hall
Michigan State University
East Lansing, Mich. 48824

WDIV-NBC Sonya
622 S.W. Lafayett
Detroit, Michigan 48231
313-222-0442

WJIM - Radio The Interview and WJIM - TV
2820 E. Saginaw
Lansing, Mich. 48904

WNEM - TV
Ellen E. Jones, News Reporter (Tape available)
Broadcasting Division, Meredith Corp.
P.O. Box 531
Saginaw, Mich. 48606
517-755-8191

WJCM-TV Day By Day, Andy Rapp
Delta College
University Center, Mich. 48710

WXYZ - TV Kelly and Company
20777 W. 10 Mile
Southfield, Mich. 48037
313-827-7777

Ohio

Paulette Brown, Director
Dept. for the Elderly
Catholic Social Services, Diocese of Toledo
1933 Spielbush Ave.
Toledo, Ohio 43624
419-244-6711

Cheryl Jensen, writes a weekly column,"Caring", for the Plain Dealer
12700 Lake Avenue, #2203 in Cleveland, Ohio
Lakewood, Ohio 44107
216-226-8990

New Jersey

Alice Eckerson
Atlantic City Press
Devin Lane
Pleasantville, New Jersey 08232

Ken Paulson
Courier News
Bridgewater, New Jersey 08807
201-722-8800

New York

Peggy Clausen
Newsweek
444 Madison Avenue
New York, N.Y. 10022
212-350-2507

Jody Abramson
Newsweek TV
212-350-1969

16-112 O—83——3

Denise Decker
Senate Research Service
Senate Chamber
State Capitol
Albany, New York 12247
518-455-2139

Linda Villarosa, Research
Family Weekly, Inc.
The Newspaper Magazine
641 Lexington, Ave. New York, N.Y. 10022
212-980-0300

Law Section--"Visitation Rights For Grandparents" (11-29-81 and 12-27-81), written by Dolores Walker, Esq. and Roslyn Kramer

Dr. and Mrs. Arthur Kornhaber
FOUNDATION FOR GRANDPARENTING
10 West Hyatt Avenue
Mt. Kisco, New York 10549
914-241-0682

Pennsylvania

FACE (Fathers' and Children's Equality)
District VII, York County Chapter
Mr. Elmer Lyle, Jr., President
P.O. Box 933
York, Penn. 17405

Texas

Sterling Municipal Library, Mrs. Mervin Rosenbaum
Public Library Avenue
Baytown, Texas 77520
427-7331

TEXAS FATHERS FOR EQUAL RIGHTS
Wives and Grandparents Coalition
San Antonio Chapter
P.O. Box 340171
San Antonio, Texas 78234
512-653-2669 (24 hr. service)

Grandparents write to:
Mr. and Mrs. Thomas M. Hughes
607 W. Gerald
San Antonio, Texas 78221
512-922-5594
(Self-addressed, stamped, legal size envelopes are requested, please)

MANY OF THE PARENTS WHO DENY VISITATION RIGHTS TO THE GRANDPARENTS OF THEIR CHILDREN BELONG TO "THIS NEW GENERATION".

TIMES NEWS 7-29-81 Kingsport, Tenn. 37662

Baby boom casualties

By AL ROSSITER
United Press International

The children of the post-war baby boom have come of age and health authorities report the increase in young adults in the United States is accompanied by a new generation of severely mentally ill young people.

This new generation of mentally ill has been described as a rootless, unemployed class who use alcohol and other drugs heavily and who strongly resist help.

Many of them have never seen the inside of a mental hospital and are more likely to call themselves social casualties than victims of mental illnesses or personality disorders, according to Dr. Bert Pepper, director of the Rockland County (N.Y.) Community Mental Health Center.

He said these patients in their 20s and 30s have a variety of diagnoses but share many of the same problems — their vulnerability to stress, their difficulty in making stable relationships, their inability to get and keep something good in their lives and their repeated failures of judgment.

"Most have been able to make only transient, unstable, unsatisfactory relationships with people their own age," Pepper wrote in the current issue of *Hospital & Community Psychiatry*. "Their friends and lovers are often other marginally functional people with equally uneven life courses and dubious prognoses."

Pepper, who also is professor of psychiatry at New York University School of Medicine, said since many of these mentally ill young people do not view themselves as patients, they are reluctant to acknowledge a need for treatment.

He said they are just as likely to blame mental health professionals for their problems as they are to turn to them for help.

Pepper said a review of 900 patients seen in a three-month period last year at the Rockland County center indicated that 294 were members of a group called chronic young adult patients. Fifty-seven percent were diagnosed as schizophrenic and 7 percent were manic depressive. The others had personality or behavior disorders, neuroses, drug or alcohol dependence and other disorders.

"We estimate that for every dysfunctional young adult we see, there are two to 10 in the community who never arrive at our doorstep but are hidden in dysfunctional families or in jails, or wander unnoticed on city streets," Pepper said.

Of those who are seen in mental health centers, he said few show marked improvement.

"Instead they become, invidually and collectively, our albatross. They are functioning persons only in the marginal sense. They manage their lives tenuously at best and disastrously at worst."

Times News July 29, 1981 Kingsport, Tenn. 37662

Mr. BIAGGI. Mr. and Mrs. Kudler.

STATEMENT OF MR. AND MRS. HARVEY KUDLER

Mr. KUDLER. Members of the committee, 2,700 years ago King Solomon made a pilgrimage to Gibeon. He "asked of God the gift of an understanding heart so that he could judge well between good and evil." We all know how well God granted that request. When Solomon decided which of the two women who came to him—in a dispute over a baby—was the true mother, his decision made the King's name synonymous for all time with the word "wisdom."

Today, my wife and I come before this committee with a horror story involving our legal rights as grandparents to visit with our dead daughter Judy's two children, Brian, 13, and Vanessa, 10. These children have been abducted by their natural father in 1979 from New York, where we had been granted visitation rights by the State supreme court, to Colorado, where we have been stripped of our New York State visitation rights, in defiance of both State and Federal law. We have not been allowed to see, talk to, nor write to our grandchildren for more than 3 years.

We think you Members of Congress are as wise as Solomon and that you will cut through the chains of redtape that keep a generation of suffering grandchildren apart from their grieving grandparents.

The problem we bring you is nationwide, involving what the New York Times described as the child-snatching of 100,000 children a year.

I show the committee a number of petitions we have brought here from Queens County. They total 553 signatures. Each bears the relationship of the signer to a child. They include many grandparents, parents, friends, rabbis, and teachers: people who know and love children. In fact, my wife and I and our friends have not yet met a single person who would not sign our petition to Congressman Biaggi and this committee asking that grandparents' visitation rights be enforced on a national level.

What we bring you is one family's story. But in the past 3 years we have received letters, mail, and phone calls from dozens, if not hundreds, of grandparents and other relatives across the country who share our problem and our pain.

In the past 5 years my wife and I have appeared in 10 different courts in two States and the District of Columbia fighting for our visitation rights and our grandchildren's rights. We intend to continue to fight until our problem and those of other unfortunate grandparents are solved here in Washington.

We estimate that these court struggles have cost us more than $60,000 to date. We are in debt. I am an English teacher in a New York City junior high school. In 1980 I borrowed $5,000 from my pension fund to pay a New York attorney who was representing the children in a Federal suit. Every paycheck we received for the past 3 years has included a $35 weekly deduction to pay off this loan. We owe attorneys an additional $7,000, and we have received bills every month for the past 3 years. At present we cannot afford an attorney.

We are not alone. We know a retired railroad worker in Pennsylvania, a grandparent, in the same predicament, who spent his life savings in a similar struggle, and he still cannot visit with his only granddaughter. This man's daughter, like our daughter, Judy, is also deceased.

You cannot measure the anguish and psychological distress we have suffered, knowing that we are being forcibly kept by a Colorado court ruling from our New York visitation rights. We fear for our grandchildren's psychological and physical well-being, as we learn they are constantly "punished," including being beaten with a belt, by their natural father.

We welcome this opportunity to testify here today, for we feel the answer to this national problem is here in Washington with the Congress and with Mrs. Nancy Reagan and her foster grandparents program and her personal influence—with the U.S. Attorney General, William French Smith, and the Justice Department's refusal to enforce the Federal Parental Kidnaping Prevention Act of 1980 passed by the Congress, but not enforced but for one case we have read of out of hundreds of thousands.

Here is what happened to us. Our late daughter Judy, 18, and her husband, Mallory Smith, 19, married in 1968. Mallory had a felony drug conviction in New York. He served 4½ years on probation for selling LSD to an undercover policeman. He also had other arrests. Two children were born of this marriage: Brian, in 1969, and Vanessa, in 1972. I have a picture of these children.

Mr. BIAGGI. Bring that up here.

Mr. KUDLER. Take the picture up to the Congressman, Marcia.

Mr. BIAGGI. When did you see them last?

Mr. KUDLER. Three years ago, just about this time, for a few minutes in Colorado. I am going to tell you about that.

In 1974 the couple separated. We took the children into our home. Mallory even called me one night and told me that if I did not take the children into my home he would put them into a foster home.

We took the children and raised them for 5 years. We were given legal custody—with the consent of both parents. Two years later, Judy died by suicide. The following year Mallory remarried. He took us into a different court and eventually was given custody, although the court-appointed psychiatrist wrote the judge that Mallory had a personality disorder and should not be given the children. Dr. Brodsky testified that my wife and I had now become the psychological parents of Brian and Vanessa. The judge also ruled that, although the children told him they wanted to remain with us, he did not care what they said.

Mr. BIAGGI. How old was the judge, roughly?

Mr. KUDLER. Judge Angelo B. Graci was approximately 60 years old.

Mr. BIAGGI. I wanted to see if it followed Mr. Chasens' testimony.

Mr. KUDLER. Approximately 60 years old.

Judge Graci granted my wife and me visitation rights every other Sunday from 10 to 6. Within 3 months of taking custody, Mallory prepared to flee New York State. A hearing was held. He swore to Judge Kunzeman that he would return after a brief vacation of 6 weeks, and he would give us 5 full days with the children.

The judge believed him. That night Mallory fled the State, taking the children out of school—in a motor home—and vanishing.

We found him by the use of private detectives in Denver, Colo., in December 1979. We now had a warrant for his arrest, in New York, from Judge Kunzeman. It is still good.

This time, Mallory swore in Denver that he would let the children visit us in New York. The judge allowed us 4 hours with them, and that was the last time we saw Brian and Vanessa. One attorney, in Denver, suggested we "kidnap" the children, but we said we had "clean hands" and we believed in the law.

A hearing was held in one day in Denver on June 13, 1980. Mallory lied to the judge about his address. We found that out after the trial, of course. He swore that my wife and I were anti-Catholic, antiblack, too intellectual, antisports, and were upsetting to Brian and Vanessa. The judge believed him. I have been teaching in New York City schools for 21 years, in the same school for 20 years. I hold a Ph. D. in English from St. John's University. I was active too in scouting for 12 years.

There were no other witnesses against us except Mallory and his wife. There were no documents submitted in evidence, no corroboration of any kind. Yet the Denver judge refused to recognize our New York warrant for Mallory's arrest. He told us to leave Denver and to give up all communication and contact with the children. Mallory's new wife has parents. The judge told us that Brian and Vanessa now had new grandparents and to forget about the children. We appealed for our visitation rights through the Colorado courts and then to the U.S. Supreme Court, asking that our New York visitation rights be honored under the full-faith-and-credit clause of the U.S. Constitution. We also cited Public Law 96-611. Two months ago the U.S. Supreme Court refused to hear our case.

After Mallory's flight from New York in 1979, we went to the local city, State, and Federal authorities.

We now raise these questions to this committee: Why did John Santucci, the Queens County district attorney, take tapes of testimony concerning irregularities in the custody trial for 10 hours from myself, my wife, my mother-in-law, my youngest son, and my grandson Brian, and do nothing about apprehending the children's father? Why would he not indict Mallory for perjury for lying to the judge and saying he was coming back? Why did Ed Koch, the mayor of New York, say he was going to investigate this case and check with the New York City Department of Investigation which, again, took written testimony from me, my wife, my mother-in-law, and my youngest son and did nothing?

Why did the special prosecutor of the State of New York investigate this case and do nothing?

Why did the Federal Bureau of Investigation in 1979 send agents to our house, take statements and documents, interview our attorney—tell us the U.S. Attorney General was sending a representative to our house, and then nothing happened?

Why did the judge in Denver ignore the fact that my wife and I have lived a life built around home, school, community, and synagogue, and take the word of a convicted felon, a man who is wanted now in New York State for arrest, and strip us of our New

York visitation rights under a loophole he found in the Colorado Grandparents Visitation Act?

We cannot answer these questions, but we hope you will try to. Every grandparents' visitation rights case is different. But there is a common denominator running through many of them. Our daughter Judy's social security benefits of more than $600 a month are being paid to the children's father. He lives with them—his new wife and their two children—in a trailer camp. We have received letters from other grandparents who say this is a common situation today.

The benefits grandchildren now receive from social security for a deceased parent makes these children very valuable to natural parents, who may then refuse to allow these children to visit their grandparents.

Nor does the Social Security Administration bother to check and see if the benefits are actually being spent on the children. You can multiply this case by tens of thousands.

For example, while the children's father was in hiding, he did not collect their social security benefits for more than a year. After the trial, he received $4,000 to $6,000 in one lump sum from the Social Security Administration. We believe this money was used to pay an attorney in Denver who argued in the court there that we be denied our New York visitation rights. We ask the committee to investigate this alleged misuse of social security benefits in our case and others.

In our written testimony to this committee we have asked that a Federal family ombudsman and a law guardians' panel be set up in every State.

No machinery now exists to help grandparents after a parent kidnaps a grandchild across a State line.

As Americans, my wife and I think of the impact that the tragedy of young Anne Frank has made upon the world.

We ask the committee: Can America now afford to raise an entire generation of Anne Franks—forgotten grandchildren—held as hostages—denied visitation by the grandparents who love them?

We call on the Congress, on Mrs. Nancy Reagan and her foster grandparents plan, and on Attorney General William French Smith to help grandparents and grandchildren to see each other.

This is what the Congress intended when, on December 28, 1980, it passed Public Law 96-611.

My wife, Marcia, would now like to say a few words to the committee.

Mrs. KUDLER. Ladies and gentlemen, how can my husband and I tell you in 15 minutes what we and our family have suffered these past 5 years? I am here today not only for my husband, Harvey, but for my 82-year-old mother, my three sons, my two youngest grandchildren, my dear dead daughter, Judy, and for her children, our grandchildren, Brian and Vanessa. We are not lawyers. We do not know a great deal about the law, but we do know that we and our grandchildren have the right to see and communicate with each other.

We love Brian and Vanessa very much. We brought them up for almost 5 years. They lived with us. We had full legal custody by

agreement with both parents. Why should procedures have to stand in our way? Under the law don't we have this right?

We think it was the aim and the spirit of the Congress that grandparents and grandchildren should have interstate visitation and communication. Are not New York and Colorado part of the United States of America? Why should the haven State of Colorado be allowed to destroy visitation rights granted to us by our home State of New York? Why shouldn't our warrant from a New York State Supreme Court judge issued in 1979, be honored or at least recognized in 1980 by a Colorado court judge?

We think the U.S. Court of Appeals Fifth Circuit ruling of 1980 and 1981 in the case of *Johns* v. *the U.S. Department of Justice* indicates that a 5-year-old girl was entitled to due process, her civil rights and counsel under the U.S. Constitution. Doesn't mean that Brian and Vanessa are entitled to their rights, too? We have been blocked by procedures and technicalities for more than 3 years, but we stand here today in Washington before this congressional hearing because we believe that right must prevail. We have not been allowed to see our grandchildren in more than 3 years.

Why can't the facts be heard, at long last, by elected representatives of the people? In the name of justice, please listen to the facts. Are these children American citizens entitled to civil rights, or are they just things? Who speaks for Brian and Vanessa? Who speaks for other grandparents and grandchildren? God knows we have tried to get justice in this case. All we ask is that the children be allowed to visit us in our home in New York. We may not know the law, but we do know what is right. We beg you, please help our family and other families. Let your sense of justice guide you.

[The prepared statement of Harvey and Marcia Kudler follows:]

PREPARED STATEMENT OF HARVEY AND MARCIA KUDLER, FLUSHING, N.Y.

"Grandparents Rights to Visitation"

(A SOLUTION TO AMERICA'S MOST-IGNORED PROBLEM)

A solution to America's most-ignored problem

James Fenimore Cooper, in one of his novels, describes how a group of pioneers copes with an engulfing prairie fire. Cooper's hero, a plainsman, uses a trick he learned from his Indian friends. He starts a second fire which burns out a strip where the pioneer band can stand in safety.

We feel that now tens of thousands of America's grandparents and grandchildren are being engulfed in a similar fire of cruelty and legal indifference. We hope that the Human Services Subcommittee of the Select Committee on Aging will start a backfire that will ignite the Congress to take action.

The United States Supreme Court has indicated in several recent cases, notably *Moore* vs. *the City of East Cleveland*, that grandparents have constitutional rights to a relationship with their grandchildren. In *Smith* vs. *Organization of Foster Families*, the U.S. Supreme Court recognized the fact that children can be raised by "psychological parents" who are not the children's natural parents. In this case, the district court appointed law guardians for the foster children.

In 1980 and 1981, the United States Fifth Circuit Court of Appeals, in *Johns* vs. *Department of Justice*, ruled that an American child has a constitutional right to counsel; before it can be deprived of its family. And, most importantly, on December 28, 1980, the Congress enacted a bill which states that no one, in America, can deprive a parent or grandparent of his custody or visitation rights by fleeing across state lines. (Public Law 96-611: Section 1738A U.S. Code 28) And that last law, our greatest bulwark against the erosion of the American family—through parental kidnaping—is deliberately not being enforced by the United States Department of Justice.

Something must be done; and done immediately.

Speaking for other American grandparents, we ask the Committee to look at the facts. Firstly, there is a New York State law, Domestic Relations Law; Section 72, which states that the parents of a dead parent have special rights to see their grandchildren. The reasoning behind this is self-evident. When a parent dies, the only direct contact that a child has with his or her roots are his grandparents. The Bible understood this simple but basic connection and many cultures in the world today stress the importance of family continuity.

It was no coincidence that, in 1980, when Colorado passed its own Grandparents' Visitation Act, that great state, like New York, wrote an almost identical visitation clause, granting grandparents special visitation rights.

Yet a terrible thing happened to my wife and to me, on Black Friday, June 13, 1980, in a Colorado state court. First, the judge refused to honor our visitation rights; granted in 1978 by a New York State Supreme Court judge. Secondly, he ignored the fact that the father of my grandchildren has a bench warrant for his arrest, outstanding in New York.

(Throughout the proceedings in New York, the father hid his plans to flee the court's jurisdiction, knowing that we had no legal remedy. Colorado ignored the New York court order and extinguished our relationship with Brian and Vanessa. Bear in mind that we had cared for them, in our home, for an uninterrupted period of five years. During this time, we had legal custody of the children; with consent of both parents. During this period, our daughter, Judith Bess, the children's mother, passed away.)

My wife, Marcia, and I have raised our four children in our community. We have lived in the same home for thirty-two years. I have been a teacher in the New York City school system for twenty-one years. I have a Ph. D., in English, from Saint John's University. I was a Cubmaster and Scout leader, for twelve years, taking my sons and my grandson, Brian, into Scouting.

My wife was president of the Parent-Teacher Association in our public school. She was a Girl Scout leader and led our late daughter, Judith, and our granddaughter, Vanessa, into Girl Scouting.

We are life members of the Hillcrest Jewish Center and are leaders in synagogue activities. Our three sons earned college degrees and they hold responsible jobs.

Our oldest son, Harold, 29, is completing a residency, in Psychiatry, at the Yale Medical Center. He is married and lives in Connecticut, with his wife and two children. Our second son, Howard, 28, has a Master's Degree from Saint John's University and works for a Wall Street firm. Our youngest son, Harley, 26, works for the New York Telephone Company. He is doing graduate work, at night, in Special Education, at Saint John's University.

When the attorney we hired, in Denver, told the local judge that my wife and I also had visitation rights under Colorado's own Grandparents' Visitation Act, the judge used a loophole to strip us of our visitation rights. This was done, ignoring the father's criminal record. (He served four-and-a-half year's probation, in New York, on a felony charge of selling drugs.)

We appealed that decision through the courts of Colorado up to the United States Supreme Court. In October, 1982, the highest court in the land refused to hear the case.

For the last two years, since the Congress passed the Federal Parental Kidnaping Prevention Act of 1980, we have been looking to the United States Justice Department for help. But the Justice Department is, in effect, overriding the will of the American people by practicing "selective enforcement" of Section 1738 A of the U.S. Code. 28.

How "selective" is this enforcement? In the two years since the law was passed and hailed by the New York Times, in an editorial (January 10, 1981: "The Feds Pursue the Child Snatchers,") we are aware of its being enforced only once. On September 2, 1981, the Times reported that Bruce Wettman, a Family Court judge in Houston, Texas, was the first judge in America to honor the new Federal parental kidnaping law. Judge Wettman honored the custody claim of a father from New York who had invoked the new Federal law.

Only one case reported enforced; even though the New York Times wrote, in 1981, that more than 100,000 children a year (2,000 a week) are being kidnapped in America; by vengeful parents. Grandchildren are being deprived of basic family rights.

When my wife and I appeared recently in the office of the United States Attorney-General, in the Eastern District of New York, we were told that the Justice Department, in Washington, does not want to "open the floodgates."

We say to this Committee, "Open the floodgates!"

Because behind those floodgates, are tens of thousands of American grandparents who are trying to re-establish contact with their own grandchildren—the very future of America!

This is as important to the Aging as their economic rights so often protected by this Committee. There can be no golden years without the glow of grandchildren. We grandparents have been left with the ashes of our memories.

Our First Lady, Mrs. Nancy Reagan, has called for the establishment of a Foster Grandparent Program.

We heartily endorse this proposal and urge Mrs. Reagan to continue to use her influence to try and help the grandparents of this country.

The decisional incompetency, capriciousness and indifference of the courts and the Justice Department, are forcibly keeping grandchildren from their grandparents.

Here is what we propose: We ask the Congress to appoint a Federal Family Ombudsman in every state of the Union. If a grandparent feels that he or she has been wrongly denied or deprived of his or her legal rights to see a grandchild, then that grandparent could go to the Federal Family Ombudsman. The Ombudsman would be able to enforce Section 1738A of U.S. Code:28, the three recent Federal court cased I have cited and any other appropriate new legislation passed by the 97th Congress. By this process, the children of America would be protected.

The Federal Family Ombudsman should also be assisted by a special Law Guardians' Panel, to be established by law. This panel—in each state—will be made up of trained people who know and work with children. These experts will be people who know what truly serves a child's best interests. Such a panel would include; physicians, social workers, teachers, lawyers, clergymen, grandparents, nurses and psychiatrists.

Complaining grandparents would present all the facts in the case directly to the Ombudsman who would refer the case to the Law Guardian's Panel. The panel would investigate and then discuss each case on its merits. Then the Law Guardians' Panel would make a recommendation to the Family Ombudsman. The Federal Family Ombudsman would then decide; based on the findings of the panel, what the grandparents and childrens' civil and legal rights should be.

These problems cross state lines and only Federal intervention now can rationalize the legal rights of grandparents and children. A Federal Family Ombudsman and Federal Law Guardians' Panel, in every state, would guarantee that the forgotten generation of children who are now being dragged across the state borders of this country will be protected—under Federal Law—as the 96th Congress intended they should be, when it passed Public Law 96-611.

This will protect future grandparents from the trauma and heartache we have suffered. No longer will one state be able to ignore the visitation and custody rights of grandparents. Future grandparents will not be denied "The Full Faith and Credit of the United States Constitution" as we were.

Given the harsh ruling by the United States Supreme Court, in our case, on grandparents' inter-state visitation rights; it is interesting to note the humanitarian rulings by this same court in *Kent* v. *U.S.* and in re Gault where juveniles were charged with crimes. The highest court has ruled that a youngster accused of the smallest juvenile crime is entitled to counsel. But as yet, any child who, as one attorney put it, has his whole life-to-be endangered, in a custody case, is not granted counsel by state court judges.

For example, when my wife and I offered to pay for counsel, on the record, in Queens Supreme Court, for my grandchildren—these children were denied counsel. They stood, as some psychologists have said, unprotected against the state's will. And, we think, their civil rights were violated.

This country has got to gets its priorities in order. Our children and grandchildrend are our most priceless heritage. Their futures are too precious to be put in the hands of state court judges who do not know enough about family life to realize they are destroying children's futures. We have seen a judge, in Colorado, sentence hand-cuffed criminals, even as he then passed judgement—without help of outside agencies—on the lives of two innocent children. In short, both grandparents and grandchildren are having their civil rights, constitutional rights, religious rights and the right to be free of kidnapping all violated; while the U.S. Department of Justice; charged by law with protecting these rights, sits idly by, or worse, places roadblocks of delay in the paths of grandparents seeking have their legal rights enforced.

We ask the Committee on Aging to "Open the floodgates." Behind those gates stand America's older and wiser people, begging for help.

My wife, Marcia, and I are working with our local Holocaust Memorial Committee in the temple in which we are life members. As American Jews, we saw what happended to millions of our brethren—men, women and children, when Western Civilization, in World War II, turned its back on Anne Frank and her friends.

Must similar horrors be perpetrated on American children by massive bureaucratic indifference to the rights and future of a generation of forgotten children—torn by cowardly and vengeful people from the arms of their grandparents who love them?

We do not believe that the American people or their elected representatives will allow this to continue.

We have already heard too many horror stories about American children who have lost a mother or a father and whose re-married parents collect hundreds of dollars a month in Social Security benefits that should be spent for the children.

These children are then passed from new spouse to new spouse and the benefits continue to pour out of the coffers of the Social Security Department—making these children very valuable hostages; while the Social Security Department does not check to see if this money is truly being spent, as Congress meant it to be, for the children's best interests and not for the benefit of their latest guardian.

Many grandparents are being denied access to their grandchildren lest they sound the alarm that a fraud is being perpetrated on the tax-payers who give their money to the Social Security Department, as we do; while that Department does not bother checking to see whether the children's benefits are being spent properly.

Again, we hope the Committee investigates this national problem thoroughly.

Charles Dickens, who himself spent time in a debtor's prison, with his father; and who was forced, as a child, to slave in a blacking factory, left a picture of horrors done to children that has made the names of Oliver Twist, Tiny Tim and Fagin immortal.

We say that the horrors being done to American children, in this, the Computer Age, far surpass anything even Dickens could imagine. The Computer Age, far surpass anything even Dickens could imagine. The recent award-winning film "Kramer vs. Kramer" raised the consciousness of America as to the shock of a custody battle and its terrible effect on parents and children. The producers were careful to give the film a relatively "happy ending," lest the audience flee the theater in droves.

In today's world of Reality, there are no happy endings for either grandparents or grandchildren who are caught up by judicial ignorance, indifference or favoritism.

In March 1982, my wife and I made oral argument, along these lines, to a panel of three Federal judges in the Second Circuit Court of Appeals, in New York. One of these judges was a woman; a district court judge. She literally wept as my wife made her oral argument. The two men on the panel were obviously deeply moved and the chief judge said the court "was touched." But that high panel did nothing; despite the patent violation of my grandchildren's civil rights and our civil rights.

We call the current state of affairs in which grandparents are denied access to their grandchildren—while the Federal government watches with massive indifference—"America's Most Ignored Problem."

In Asian and African cultures, the Family comes first. Wisdom and Love, personified by grandparents, are respected and revered.

Has this country sunk so low, do we so worship Money, Oil and Munitions that we put them ahead of our future generation of children? Are Americans now so concerned with themselves alone that they are willing to turn their backs on a whole generation of forgotten, exploited, rootless and suffering children?

Will we stand idly and helplessly by while grandchild and grandparent are kept separated by bureaucratic red tape and official indifference at every level of state and Federal government?

We look to this Committee on Aging and to its Subcommittee on Human Services to continue to investigate the horrors we have experienced first hand and which many others are living across the length and breadth of this great land.

We also look to Mrs. Nancy Reagan and her humanitarian interest in grandparents and grandchildren. We hope that the free press of this country will investigate all the ramifications of this, America's most ignored problem, bar none, and that, for once, the interests of voiceless children will be heard and listened to first . . . in America, instead of last.

Mr. BIAGGI. Ms. Ferraro?

Ms. FERRARO. When I made an opening statement I read from a letter received by my office from Mr. and Mrs. Engel. As I was going out to cast my first vote of this morning, a woman stopped

me on the way and identified herself as Mrs. Engel and indicated she was here to hear what was going on during the course of the hearings. I ask unanimous consent that she be permitted to address the committee to share with us a little bit of her experience.

Mr. BIAGGI. Without objection.

STATEMENT OF MRS. HENRY ENGEL

Mrs. ENGEL. Thank you very much.

It has been 4 years since we have seen our two grandchildren. We have tried persistently. Our daughter also Judy by coincidence, is not a suicide victim as was the Kudlers' daughter, but destroyed by her marriage. She is a runaway mother because she was afraid of abusing the children and herself and ran away to give her husband an opportunity to find a more supportive nurturing parent as a mother. We entreated the custodial parent, the father, to have some communication with the children.

After his remarriage, the relationship, which had been cordial and warm and supportive, came to an abrupt halt. We found there was vicious propaganda expressed against us and lies we heard expressed in court when we went to court. The judge in our case was a woman, herself a grandmother, and on the basis of the testimony by a psychologist whom the father had called in after he did not like the findings of the court-appointed psychologist—he examined the children for 10 minutes, one child for 10 minutes—and then stipulated on the stand at $100 an hour, and he must have spent about 10 hours there, that the child was fragile as a result of having gone through the traumas of a runaway mother and having been left and abandoned. Any visitation rights granted to us would increase the hostility of the custodial parent to such an extent that the child's mental health would be threatened.

We had only arrived at the decision to go to court after months of entreaty, letters. We finally persuaded our ex-son-in-law when we found where he was—he had been gone 9 months—to meet with us at a neutral place on Long Island. They are now back from Mexico where they were for 6 years. He said at that time, "I will not countenance negotiations to see your grandchildren. It is my decision. I do not care if the children hate me, I do not care if they suffer for it, there is to be no relationship and no contact hereafter."

Prior to that, in the hope that there would be some opportunity to do something for the grandchildren other than just being a grandmother, I took a course on learning problems because the older of the two children is dyslexic. As a result of taking that course, and of trying to learn something to help this child I became involved in producing a book that has come out on the subject. The book is a big success. My attempt to help the child is not. We have seen the children once, since 1977, for about 3 seconds as they were waiting to be called into the judge's chambers. I could not bear to look at them in the sense that I did not know whether I would ever see them again. The child, the older of the two children with whom I had had a special relationship because I used to send letters to Mexico—she was an artist, and I sent things for her to use in this

special skill—she was sneaking looks at us, very surreptitiously, afraid of her father.

The decision went against us. The judge ruled that it would be dangerous to the children, particularly to the older of the two with whom this relationship had been established, but she said that applied only at the present time. Since that decision we have written to the father, who is now on Long Island, asking that he cease his opposition to us. We are the only grandparents in this area. The stepmother has parents, grandparents in Mexico. His father is in North Carolina. It was maintained that because we could not have contact with the children for 5 years we had not established a meaningful relationship. The father of our ex-son-in-law maintained in a letter that the new grandparents are supportive and loving and have wonderful contact with the children. But they are in Mexico. We are within an hour of them now.

We are searching desperately for a means to go back to make our point known. We decided to go into legal action when I came upon the book "Grandparents, the Vital Connection, Grandchildren." In the course of this book there are drawings made by grandchildren in connection with their relationships with their grandparents. The decision to go into court was based upon a drawing by a child who had been cut off from her grandparents and the family of her mother, as ours have been. The child drew an empty outline of a back.

We determined we would not let these children think we have abandoned them. We have love, but the hostility of the custodial parent has prevented us from letting them know it—we have written to him since and asked for notes about the children, how they are doing, pictures. We have no knowledge what is going on with them at all. He has not answered anything. I feel the only recourse we have for the children's sake, because the children are the most important parts of our society, they are our future and the family is important as a whole structure, is this Federal legislation where the grandparents have the right inherent to them in the relationships of birth and roots.

Ms. FERRARO. Thank you very much.

Mr. BIAGGI. Clearly you have established an emotional background and factual background for furtherance of our concern in this issue. I know you represent an infinitesimal part of the entire picture. To say it is outrageous is I think a moderate expression. It can be infuriating, frustrating, all of the negatives one might apply to a situation, certainly inconsistent with America's philosophy of concern for human rights.

As you were testifying, I could not help but reflect on the effect of such a denial if Mrs. Biaggi and myself were denied visitation. I know you have experienced it. It is like dying a little, and you are right. Being a grandparent gives you an opportunity to, well, maybe compensate for what you did not do for your own children in time and effort. The expression was said, when a child is born, a grandparent is born, and there is no such thing as an ex-grandparent. You are dealing with deep, emotional, loving feelings, and to deny a child the benefit and advantage of a stable relationship with a grandparent is to deny a child a very important element in that child's growth.

I guess I could talk ad infinitum in connection with this, but the issue is plain. The facts speak for themselves. The grief that you have been subjected to, frankly, is of such a magnitude it defies description. How you bear up under it is beyond me, without becoming psychotic. It is testimony to your own strength and commitment. It is the commitment to know one day that you will see them again. I think we are coming to that day, and this is another step forward.

The fact that we have some 42 States with laws—I know sometimes they are not always properly applied, and there are some injustices and there are some aberrations, but we do have some 42 States that have recognized the problem, and to me that is quite encouraging. Now it is up to us in the Congress to talk about uniformity so there will not be loopholes and there will not be a semblance of statutes that are faulty in their provisions. And enforcement is critical. Every level of government has a responsibility to enforce the law and not to be selectively engaged in this type of practice. And to deny one person, one grandparent his or her right, that is sufficient justification for proceeding. That to me is probably more important, enforcing the law that applies to that area is more important than even some of the minor crimes that are being prosecuted every day, because in the ultimate, most of those criminals are permitted to walk in the street even without serving a day in jail anyway.

Here we have law-abiding, loving parents who are being denied a birthright, a birthright, and you have children who are being denied a birthright. It is a human right. Someone said child abuse. Yes, that is a form of abuse. We will look into that, too. But it is certainly a fundamental human right that should be made available to every person, not only in this country but in the world. But let us deal with our Nation first.

Let me first acknowledge that Mr. Petri was here as a Member of Congress and had to leave.

You stated something about the Justice Department, Mr. Kudler, refusing to prosecute. Would you elaborate on that a little bit?

Mr. KUDLER. Yes, sir. What I tell you may not make much sense. I have gone over it, over it, and over it, with the Justice Department people in New York and Washington. They assure me that what I am telling you is the truth. Through the offices of Senator D'Amato in New York we had an appointment with a young man named Lawrence Zweifach in the intake division, the criminal department, Eastern District of New York in Brooklyn. He read a 67-page chronology that we submitted and then he reported to Washington.

And at the interview, Mr. Biaggi, he said, "Were you aware that the Justice Department was in effect practicing selective enforcement?" He took out a manual, the kind we used to see in the Army, and it had the U.S. Seal on the cover. He opened it to some blue pages and these were house rules of the Department. He said the Justice Department sometimes decided when to come into a case like this and when not to. He used the words "green light" and "red light." He did not explain to us what the rules were. He said he would have to go to his superiors in Washington.

And we went to our rabbi, who explained what was going on, and the rabbi said, "Find out who gives the green light and who gives the red light."

We got a phone call and a letter from Mr. Zweifach, and he said the counsel in the criminal division here, headed by a Mr. Lawrence Lippi, had decided based on house rules, Mr. Zweifach said, they were keeping "the floodgates closed." Marcia and I and all the people at the table are behind the floodgates. They did not want to open the floodgates. The ruling is as of last week, and we have an appointment with these gentlemen tomorrow. What they said was that if you know where your ex-son-in-law is, we cannot help you. It is a catch-22 situation. But if you do not know where he is, we can ask the FBI to find them. We know that President Reagan signed the National Parental Locator Act recently, which they will not enforce for 2 years because it is too expensive, and who cares about children's votes, anyway? Children do not vote.

Mr. BIAGGI. Grandparents do.

Mr. KUDLER. Yes, sir. And they said to us, Mr. Chairman, they said to us that we will be happy to come into this case if you will go to your State prosecutor or your local district attorney and get a felony indictment against your ex-son-in-law. Then we will bring the machinery of the FBI into effect. And then when we went back to the State people, who have turned a cold ear to our pleas for all these years, they said "No, go down to the Justice Department and tell them to enforce the law." We are caught between the two, neither of which want to help us or anybody at this table.

Mr. BIAGGI. We will pursue this, Mr. Kudler. I will assign Dr. Statuto to accompany you tomorrow when you visit.

Mr. KUDLER. We are grateful for that, because two people alone are helpless against a Federal bureaucracy.

Mr. BIAGGI. Dr. Carol Maria Statuto just joined our committee and comes as a Congressional Science Fellow sponsored by the American Association for the Advancement of Science and the Society for Research in Child Development.

Dr. Statuto received her doctorate in early childhood education and psychology from Columbia University, where she has also served as a faculty member. She established a program in child advocacy in 1977 at Marymount Manhattan College in New York, the first of its kind in the country. Dr. Statuto received post-doctoral training in child development and social policy from the Bush program at the University of Michigan. We welcome her to the committee.

I want each and every one of you to know that every point that you made today will be followed assiduously and relentlessly.

Mr. Shumway.

Mr. SHUMWAY. Thank you, Mr. Chairman. I see the bells have rung again. We will soon have to recess once again. I apologize for that. The testimony here this morning has been very touching, and I am sure each of us who have heard it have been affected by it.

In my own case, I am the father of six children, and only newly a grandfather. Our first grandchild was just born last September. As each of you testified about how dear those grandchildren are to you, it is easy to personalize one's own situation. I could very much

empathize with your feelings knowing how I feel about my grandfather.

I am a former lawyer and participated in several custody cases in California. I am familiar with how emotional those cases can be and how difficult those rights are to determine. Each of you in testimony seem to make reference to what has happened to you in court and how certain judges have reacted to your pleas. In some cases the judges have abused discretion, and in other cases they have adopted views sympathetic with yours.

The concern that I have as a Member of Congress in considering this in a national light is how we can structure a body of law, assuming we have the right under the Constitution to do so, that would apply to each of the varied situations that you have illustrated here this morning. Obviously there have to be feelings that have to be accounted for and emotions on all sides that have to be taken into consideration. Yet, when we put something into statute we try to invoke a sort of mechanical kind of situation that would perhaps overrule some of the abuses of discretion you have been confronted with in your court exposures.

My question is how to develop a law that would apply to this important area that would be mechanical enough to address your needs but yet human enough to allow some of these important factors to be taken into consideration. It is a difficult mix to come up with, but we are saddled with that responsibility because we have to have it down in black and white. It has to be codified, and the needs that you have referred to here this morning need to be addressed. It is something that is very difficult, and I just want you to know that that is a task that we face that is not a very easy task to resolve. Certainly if you have in your experience and within your organizations and your communications, if you have the key to resolving it, we would be happy to hear further from you.

A second general area that I had concern with is if we are indeed going to recognize grandparents' rights and the custody, when do those rights take effect, and how should they be put into effect? Would any of you expect that when a divorce occurs and a custody dispute is handled by the court that the grandparents at that point enter in as parties to the legal proceedings and that their rights be determined then? Or would there be some kind of a subsequent proceeding that would be triggered by incapacity of parents, and if so, what would trigger that? Those are questions that I think need to be resolved. I guess as we go on with the hearing we can come up with answers, but if any of you have solutions, I would be happy to hear from you.

Mr. BIAGGI. Thank you, Mr. Shumway. You raise problems that are very significant. Those are problems that we will have to wrestle with in the crafting of legislation. The suggestion of whether or not a grandparent should be sitting in at the dissolution of a marriage is very commendable, but interestingly enough, there is one State that permits that. Very interesting.

Mr. CHASENS. I have a suggestion. I think the bloodline ought to take priority. It is your body heir. These people have money set aside. We have. We are fortunate, and if we look at it like chicken soup, you think about it, it is healthy for you and will do you good, but if you are thinking about it will help, it will help. Our mental

attitude has to change. Ninety-nine percent of the people say we are right, but where do we go?

Mr. BIAGGI. You are moving. You are progressing. I am optimistic. I think it is a right that should not be denied.

We will have to cut you short because we have bells, and I know Ms. Ferraro wants to comment.

Ms. FERRARO. Mr. Chairman, I ask that you have the panel remain until we come back from the vote, because I do have questions for the panel.

[Recess.]

Mr. BIAGGI. The hearing is called to order.

Ms. Ferraro.

Ms. FERRARO. Thank you, Mr. Chairman.

After listening to the panel, I cannot get over the frustration that you people must feel, especially those people who have actually lost their children to death. I as a mother can think of absolutely nothing worse than losing a child, except if it is compounded by losing the child's children after that, and you have literally lost those as well.

Mr. Kudler, I wanted to talk to you a little bit about what occurred in Queens County. Before I ran for Congress, I was a supervising trial attorney at the district's attorney's office in Queens and worked for John Santucci and practiced before Judge Kunzeman. You indicated that you were in his office for 10 hours. What bureau were you dealing with there?

Mr. KUDLER. Mrs. Ferraro, before I speak, I may say something that may sound intemperate. It is very hard for me to discuss this, and I do want to answer your question. I would like to swear that everything I am going to tell you is the absolute truth.

Ms. FERRARO. I have no doubt about that.

Mr. KUDLER. I worked personally with Mr. Santucci's first assistant, Mr. Joseph Fisch. The 10 hours were logged. He asked me to bring Brian to him and he taped him. Then he introduced us to a gentleman who never said anything, Mr. Fisch called him Mr. Berg, and said he was their special investigator. Mr. Berg sat silently and I believe the day that my mother-in-law, my wife, and my son Harley were there, Mr. Berg was there also.

Ms. FERRARO. When you finished your testimony, was there an attorney assigned to the case besides Joe Fisch?

Mr. KUDLER. No, ma'am. Joe Fisch told us as he was taking the testimony that it might not help us. But the information we were giving, he said, was very important to the district attorney's office. I told the Justice Department in Brooklyn what it was, and they wrote it down. I believe they forwarded it to Washington. I do not know if you want to hear me say these things, because we do not want to color what you are hearing with the political climate of Queens County.

Ms. FERRARO. The arrest warrant outstanding, was that issued by Judge Kunzeman?

Mr. KUDLER. Yes.

Ms. FERRARO. That was issued prior to your going to the DA's office?

Mr. KUDLER. No, ma'am.

Ms. FERRARO. It was issued after?

Mr. KUDLER. Yes, ma'am. I believe as a result of our having gone to the district attorney.

Ms. FERRARO. You went to the special prosecutor?

Mr. KUDLER. Mr. Lankler, I believe after Mr. Nadjari left office.

Ms. FERRARO. Mr. Duffy is——

Mr. KUDLER. Yes. We are interested in any help you can give us.

Ms. FERRARO. Has his office done an investigation in this matter?

Mr. KUDLER. No, the special prosecutor would not touch the case with a 10-foot pole.

Ms. FERRARO. Because he feels with law enforcement officials and members of the judiciary who have gone outside the scope of their authority—he probably felt it was outside his jurisdiction.

Mr. KUDLER. I do not know. I would like very much for him to talk to us. This is several years later, and we believe there have been complications that changed the situation.

Ms. FERRARO. When you saw your grandchildren for the 4 hours that you were there that last time, what was the reaction of the children?

Mr. KUDLER. I will tell you my reaction, and I would like my wife to tell you hers because we do not always see things the same way. When we picked them up at the school, we had a warrant, and this is the truth, we had not seen this girl in 6 months and she was 6 years old. She did not know we were coming. She ran to us and after she said hello, the first thing this 6-year-old child asked us is, "Where is Mrs. Corrado?" And Mrs. Corrado was her attorney in Queens County. We think she wanted to go home with us.

Ms. FERRARO. Is that Pearl Corrado?

Mr. KUDLER. Yes, ma'am, that is Pearl Corrado.

Mrs. KUDLER. The children were shocked and Vanessa said, "Where is Mrs. Corrado," because she felt Mrs. Corrado was her savior. We had another attorney with us because Mrs. Corrado was by then a judge.

We said, "She is not here."

She said, "Are we going home now? Should I get my coat or will you take me like this?" We did not know what to say.

Brian came down the hall. I did not know him. He had lost a tremendous amount of weight. He did not look like Brian, but he was stunned and I really did not know who he was. He got close and said, "Mammy"—that is what they call me. I said, "Brian, I did not know it was you. Of course he hugged me, and he said, "I cannot believe it. I was just talking to my teacher about you this morning." He was so flabbergasted. Of course it was a shocking experience, but those children wanted to come to what they call home and visit with us and be with us and our family, and it was quite a time.

Ms. FERRARO. I guess the question I would ask of all of you is one that I guess is—it is hard for a parent, and I could imagine it is equally as hard for a grandparent—if the courts found fairly, and obviously from the testimony we have had today, many of you do not feel you have been given a fair hearing either because the judge did not understand or because there was insufficient testimony or in an instance where it was given and the child taken away—if the court found fairly that it was in the best interests of

the child not to have you visit, would you accept that? I am going to ask each one of you that.

Mrs. KUDLER. Who would decide this?

Ms. FERRARO. The court.

Mrs. KUDLER. How many people on the court?

Ms. FERRARO. If it were a fair hearing with a fair judge.

Mrs. KUDLER. No, not one man. He cannot play God. It says, "In God We Trust." We trust God. But in the courtroom its "who do you know?" We were passed around from judge to judge. Nobody wanted us. Nobody wanted the case. We were treated like dirt. Nobody really cared about the children or where they belonged. Judge Joan Durante—my grandson was walking down the steps of the courthouse and he said, "I want to go back." Mrs. Corrado said "Why?" "Because Judge Durante told me I should go to my father for three Sundays". And she gave him cookies, and he said, "I do not want to go, but she bribed me." That was the word he used. "He realized what had really happened, and every judge had said, "Do it for me, do it for me." They do not care what the child says. No one judge should decide this, no, ma'am.

Mr. BIAGGI. Would the gentlelady yield?

How about a mediation panel?

Mrs. KUDLER. Yes, made up of psychiatrists, social workers, and other child experts. The family court is the most decent. They have understanding. The Queens Supreme Court really is not interested and they do not want us. I can tell you case after case, friends of ours from our little area in Queens, one just yesterday had Judge Graci——

Mr. KUDLER. Judge Bushman.

Mrs. KUDLER. She got Judge Bushman and she was hysterical last night when we called her.

Mr. BIAGGI. The Sumpters, you prefer a mediation panel?

Mr. SUMPTER. Yes, sir.

Mr. BIAGGI. Mrs. Engel.

Mrs. ENGEL. We agreed before during the trial that the best interests of the children came first, because that is the priority issue. When we found out that the best interests of the children were being threatened by the father but not by us—they might suffer a trauma of small proportions—mediation, yes, before the trauma, large or small.

Mr. BIAGGI. Mrs. Chasens.

Mrs. CHASENS. When you talk about mediation, we went to trial, my husband told you. The judge spoke to my granddaughter in his private chambers. She loves us, she enjoys being with us, one thing after another, and after 2 days in the courtroom, this man gave us a 2-year contract, a judgment for 2 years. We can see her as often as we like, but that depends on the father. You know, she has no say in it. She will be 12 in May. But he came back and he told us all this. Then he gave us a visitation order, no less than four times in 6 months.

Mr. BIAGGI. Mrs. Chasens, please just answer the question.

Mrs. CHASENS. There would have to be firmer law and mediation with the right kind of people.

Mr. BIAGGI. We are talking about the preferred course to pursue.

Mr. KUDLER. Congressman, the judge who took away our grandchildren in Denver was sentencing convicts in between talking to us.

Mr. CHASENS. I have two documents which I would like to submit. One is a court order from Judge Gruzio, who I said was family-oriented. This is back in 1976——

Mr. BIAGGI. Please do not tell me what he said. Submit it for the record.

[Material retained in committee files.]

Ms. FERRARO. Let me say that the reason I asked that question was just specifically to get to an avenue that can be taken so that we can see where we are going in order to resolve some of these problems, and obviously, Mr. Chairman, the jurisdiction resting solely in the courts is not satisfactory. There is no doubt in my mind that every individual here puts the welfare of their grandchildren above their special needs, but by the same token even they feel they are not getting a fair shake in the courts. Perhaps the jurisdictional problem is something that we should look at as part of our handling of this matter.

I just want to thank you all individually and you for coming down as well. I am delighted you were able to be here. I will follow up with some of our people in Queens who are known to me and see if we can help you out.

I would like to mention the jurisdictional problems that occur between States. New York State had an arrest warrant and Queens County has tens of thousands of arrest warrants outstanding. Their jurisdiction extends to the borders of the county, it does not go further.

Mr. KUDLER. This one extends to the State of New York.

Ms. FERRARO. It extends to the State of New York, but not to the State of Colorado. That is why the frustration is extremely acute, but whether on this type of thing, I used to be in charge of the special victims bureau handling the child abuse cases and elderly victims and battered spouses. It did not extend beyond, and often we would have the arrest warrants and have to wait until they came back to our jurisdiction. We will follow up. I do not know what can be done in the county, but we will follow up.

Mr. BIAGGI. Mr. Rinaldo.

Mr. RINALDO. Thank you very much, Mr. Chairman. I was just listening to some of the statements you made with great interest. What I want to do is first of all certainly congratulate you all for coming down here, and then I recognize that it has probably cost—many of you have been involved in court action—thousands and thousands of dollars. What I feel is important is, what advice do you have, and I would appreciate it if you could answer it briefly, for other grandparents who are interested in pursuing their rights? There are many cases. I am sure some of these people are probably reluctant to do so. In other cases perhaps they do not have the financial means to be able to take legal action. What would you suggest?

Mr. CHASENS. Personally, it is the temperament and the understanding of the judge. We are victims of that. I have a statement which I read from Judge Grucio's order. Judge Francis, they were

very liberal. The young judges are trying to set a precedent or something, I do not know. This I will quote verbatim,

> After years of litigation, I think I have gone along with this enough. If you think I will not enforce my order, just stick around. You will see that I will enforce it, that I enforce all my orders. I will enforce Judge Francis' orders. I want to make it perfectly clear.

And that is it.

Mr. RINALDO. What advice would you give if you had to give—in a sentence or two——

Mr. CHASENS. Do not go to court unless you have a sympathetic judge. That is what my article is about. After 8 years, we lost. I do not want to be the Don Quixote of the grandparents. After the article appeared in the paper, I had hundreds of calls and letters and people said, "What should I do?" Go to your attorney. If you have a sympathetic judge, fine; if not, you are wasting your money.

There should be an agency set up. What is the necessity of going to court wasting their time, wasting our time. It is a human need. You restrict the speed limits to 50. As I said before, we have hopes and aspirations for our grandchildren. They are a part of our life. They will always be, whether the ex-husband remarries—there could be 10 or 12 grandparents, they are still our grandchildren. Heirs of body should have precedence and consideration. If one judge in his infinite wisdom gave you x amount of visitation, it is inhuman and cruel to deprive you of that. After 3½ years Judge Grucio's decision was overruled by an inexperienced judge. To quote, "I needed a heart surgeon; I got a proctologist."

Mrs. CHASENS. Max is very emotional, more so than I, because I know we go back to the same thing all the time. This man is a father. He is not a grandparent. He has young children. As I think somebody said down there, "How can they dispense the love and the understanding? How do they know what it is to be a grandparent and to want to have visitation rights?" I said that when I was too long on the comment, that the judge spoke to my granddaughter and told us she wants to see us, then he gives us four visitations in 6 months. We got on the stand and with our lawyer said we agreed that we did not want structured visitation any more because she is older and has different things that she has to do. I am trying to tell you, it has to be structured in some form. You just cannot say do whatever you want to do. Here we got an offering and we cannot see her at any special time or any length of time. That is the structured visitation.

Mr. RINALDO. Mr. Kudler.

Mr. KUDLER. What you are hearing is the results of years of hardship. It makes it hard to answer questions, but I will answer your question. I would suggest to somebody who was in our predicament, find the best custody lawyer you can find and afford, someone knowledgeable about these cases who is prepared to fight for you and not just take your money and walk away. And then you better make damn sure that there is no political influence brought to bear on the court.

Mr. RINALDO. Thank you.

Mrs. KUDLER. I do not think that the age of the judge is a criterion, because it does not really matter.

Mr. BIAGGI. The gentleman's time has expired.

Thank you very much, ladies and gentlemen, for your contribution today. As I said before, it is the basis for this committee moving forward.

Mr. BIAGGI. The next panel is the panel of psychiatrist, Dr. Arthur Kornhaber of New York and Dr. Andre Derdeyne of Virginia.

I have been asked by unanimous consent to insert into the record a poem by Max Chasens concerning his grandaughter. Without objection, so ordered.

MY GRANDDAUGHTER

She Doesn't have a Sister or a Brother
And worse than that, lost her real loving Mother,
Yet her eyes are burning eagerly with a deep desire
To kindle that loving flame into a raging fire.

She feels that she must act for two
To ease the pain with a love so true,
And when her small hands caress your face
And pleading eyes say, "please let me try to take her place".

With this great love we have for each other,
"God bless dear old Gramps and my Mother's Mother.

So please don't let me go astray on this or any other memorable day,
I give to them for they are old and hungry for my love
For we are often thinking of our loved one who is watching from above.

PANEL 2—PSYCHIATRIC VIEWPOINT, CONSISTING OF DR. ARTHUR KORNHABER, MOUNT KISCO, N.Y., PSYCHIATRIST AND FOUNDER, FOUNDATION FOR GRANDPARENTS, COAUTHOR, "GRANDPARENTS-GRANDCHILDREN, THE VITAL CONNECTION;" AND DR. ANDRE DERDEYNE, PROFESSOR OF PSYCHIATRY, DIRECTOR, DIVISION OF CHILD AND FAMILY PSYCHIATRY, UNIVERSITY OF VIRGINIA SCHOOL OF MEDICINE, CHARLOTTESVILLE, VA.

STATEMENT OF DR ARTHUR KORNHABER

Dr. KORNHABER. Honorable Chairman and members of the committee, thank you very much for inviting me here today. I have been studying the relationship between grandparents and grandchildren for over 8 years now and have traveled over the country.

I have submitted to Dr. Statuto a paper called Unwilling Grandparent-Grandchild Divorce, which examines the issue from a more objective point of view and, two, emerged from talking to about 30 grandparents and grandchildren and parents involved in this issue.

Ms. FERRARO. Mr. Chairman, might I ask Dr. Kornhaber to give the committee some idea of his background?

Dr. KORNHABER. I am a child and family psychiatrist and president of the Foundation for Grandparenting. I started the Foundation after writing a book entitled, "Grandparents and Grandchildren, the Vital Connection."

I have studied the relationships between grandparents and grandchildren in great depth. The main conclusions of the study of, "Unwilling Divorce of Grandparents and Children," is that grandparents lose visitation rights with their grandchildren, because: One, the importance of grandparents to grandchildren is unknown in our society—and that includes judges and even people in the helping professions; two, our society has no role for the aged, and wor-

ships physical beauty, socioeconomic and political power as an ethic; three, our society ignores the importance of the family in general, especially the three-generational family, and it also ignores the role of emotional attachments in human happiness. In such a society, grandparents and grandchildren are not important.

What I am interested in doing is talking about more than the unwilling grandparent-grandchild divorce issue. As members of the committee on——

Mr. BIAGGI. Excuse me, Doctor.

You seem to be talking extemporaneously. That is perfectly proper. Bearing that in mind, we will include your entire statement in the record.

Dr. KORNHABER. Since you are going to legislate and since you are in an important position to change the emotional tone of this country concerning the aged, I think I can give you some reasons and some support and some ways to do this. I would like to first share my findings about the importance of the relationship of grandparents to grandchildren, what that relationship does for both generations, and why it is important to all three generations.

In the natural order of things, generations emerge telescopically one from the other genetically, every child is the sum of two parents and four grandparents. The child in the womb possesses instincts, temperaments and emotions that are not his or hers alone. Psychologically, every child develops not only in the world of its parents but within the larger world of its grandparents, of its father's fathers and its mother's mothers.

There is a natural, organic relationship between the generations that is based on biology, verifiable psychologically and experienced as feelings through emotional involvement. What we found in our 8-year study is that our society does not honor this bond.

What I find marvelous about the people who are fighting to see their grandchildren—of over 1,000 people in our study, only 100 grandparents were interested in grandparenting—is that they are going against the national trend of shearing grandparents from family structures.

Our society does not honor this bond. Indeed, many grandparents have been sheared from the foundation of the natural three-generational family, leaving the nuclear family with surrogate grandparents, self-appointed experts, and paid strangers.

Where have all the grandparents gone?

If social theorists and government planners are to be believed, many grandparents have shed their identities and joined the ranks of the aged, all the more tragic because there are more grandparents alive today than ever before. In the next 60 years, demographers predict, the over-65 population will double. Because of this graying of America and its effects on the economy, some experts envision an era of unprecedented intergenerational strife in an age-segregated society where the aged will no longer have the love, respect, and support of their juniors. I am concerned about this.

Children who have been abandoned by their grandparents will not be kindly disposed toward them. The social and emotional results of this abandonment are evident; a chaotic younger generation, a confused and harassed middle generation, and an uninvolved older generation.

Our inquiry into the nature of the relationship between grandparents and grandchildren over the past 7 years has shown that not only are grandparents and grandchildren important to one another, they are indispensable for one another's emotional well-being.

Three of the most important findings of our study show:

The grandparent-grandchild bond is second only in emotional importance to the bond between parents and children.

Problems that are directly passed on from grandparent to parent are not directly passed on from grandparent to grandchild. Nature gives grandparents another chance. I think this is very important for establishment of a law for this issue, because children will only have problems with their grandparents for the most part because their parents have problems with the grandparents. If the children are isolated from the grandparents and they do not have direct connection with their grandparents, when you put a grandchild and a grandparent together, something wonderful happens.

Grandparents and grandchildren affect one another only because they exist.

Some other findings of the study show that grandparenting is a natural instinct rooted deeply within our biological make-up and manifested by thoughts, feelings, and behavior. Before the grandchild is born, a grandparent undergoes a mental rehearsal for the role he will play as a grandparent. The way an individual views grandparenthood is dependent upon his experience as a grandchild and the way his society views the state of grandparentood.

Grandparenthood is not celebrated in an ageist society. When the grandchild is born, special thoughts and feelings and behavior are experienced by new grandparents. There are feelings of joy and a real internal push to want to hold and to see that child, which is a very biological need.

The children with vital connections are close to grandparents, are very special and different from kids without grandparents. The kids who have a close relationship to at least one grandparent biologically, or even an elderly person, are different. They are deeply rooted in the family and the culture, more patriotic, do better in school, are emotionally secure in the knowledge that there are many people who care for them. They are not ageists because they have older people who love them. Indeed, they look forward to old age because they feel there is a role for older people.

They are not sexist because grandmothers and grandfathers do about the same things. These children have a role model for the future and therefore do not fear old age. They have a sense of social immunity, a place to go apart from their parents and the peer group when they have problems. We call it an emotional sanctuary. They feel a very powerful sense of pride and shame, something in children today that has disappeared. They know if they don't do well in school they are going to dishonor their family and dishonor and shame and pride is an ethic that is disappearing from the American children because you have to have people to bounce that off of, and grandparents have time to do this. Thus, these kids believe in social order.

Grandparenting offers emotional work for the older generation. This is natural work for older people. In our country we don't have any other work for the elderly.

Grandparents have roles that are unique. They are similar to the parent's role because grandparents can fulfill the role of parents. They are different from parents' roles because a grandparent has already been a parent, while a parent has not been a grandparent. Grandparents' roles are diverse and dynamic. With time, their roles grow in breadth and depth as the vital connection with a grandchild becomes stronger.

At first, a grandparent's role is titular, conferred by the birth of a grandchild. Immediately, a grandparent becomes a living ancestor and a role model for the child, a future template for the child's own grandpaternity.

There is a person 94 years old in Appalachia who is wheeled out to all the family occasions and he just sits there at the table and blesses everybody. Kids love him. They love to touch him and they love his wrinkles and he stands for something and doesn't really have to do anything.

As a mentor, grandparents teach children things that they learn nowhere else. When the child's parents aren't available grandparents play the role of nurturer, the second line of defense between children and social agencies. Grandparents nurture grandchildren indirectly by supporting their parents in time of need, especially important in today's society which places great socioeconomic stress on the parent generation. When grandparents and grandchildren spend a great deal of time together, they become pals.

There is a young man in Nantucket who doesn't go to school because his grandfather is a fisherman and he skips school and goes on the boat with his grandpa. His father was upset because his grandfather took him in a bar and started drinking with him. But it is an alliance between the generations—the old saying, they have a common enemy, you know. These roles give fulfillment to elders' lives. They are the culmination of a lifetime accumulation of knowledge and wisdom and emotional experience applied to the rearing of their young. It is, as Erik H. Erikson calls it, generativity in its most basic form.

Concerning grandparent visitation rights, grandparents and grandchildren belong together because they have a direct relationship, exclusive from their all-important relationship to the middle generation.

Mr. BIAGGI. Excuse me, Doctor. We are generally going to recess, but this has been happening all morning and it is consuming an awful lot of our time. I have read your testimony. I read testimony at 3 o'clock this morning simply because I could not sleep. I read everyone's testimony, but the other members and the staff members would like to hear testimony. I would like unanimous consent while we are going to vote that staff be authorized to conduct the hearings.

Without objection, so ordered.

Mr. BLANCATO. Please proceed.

Concerning the issue of grandparents' visitation rights, it is therefore obvious that grandparents and grandchildren have a right to celebrate their relationship with one another as long as a

grandparent is capable of just being with their grandchild. This is clear in light of the findings of our studies which show that grandparents rarely commit the same mistakes twice, they rarely hurt their grandchildren.

Most children who were angry at their grandparents felt that way because their parents were angry at their grandparents. Their anger was most often due to the fact that they mirrored their parents' perception of their grandparents. Left alone with their grandparents they were quite happy, although they were hesitant to report this to their parents. It is therefore clear that in cases of family feuds, where death or divorce creates blended families that wish to divorce grandparents from their grandchildren, the law should support the right of the child to have access to a beloved grandparent. Thus we support a uniform grandparents' visitation law for the following reasons: It establishes the importance of the grandparent-grandchild relationship and the importance of the three-generational family in American life, and it provides for reconciliation and hopefully a continued visitation of the grandparent and the grandchild during any type of litigation.

In other words, in no way should the visitation of the grandparent with the grandchild be stopped, and I strongly feel that the way to do this is to have a strong grandparent visitation rights law and subsequently to have any litigants referred to a family court of people who are learned about the importance of the relationship between grandparents and grandchildren, that visitation be continued, and then work from that point.

[The prepared statement of Dr. Kornhaber follows:]

THE PREPARED STATEMENT OF DR. ARTHUR KORNHABER, MT. KISCO, N.Y., PSYCHIATRIST AND FOUNDER, FOUNDATION FOR GRANDPARENTS, COARTHOR, "GRANDPARENTS-GRANDCHILDREN, THE VITAL CONNECTION."

The Vital Connection

Every time a child is born, a grandparent is born too. In the natural order of things the generations emerge telescopically, one out of the other. Genetically, every child is the sum of two parents and four grandparents. The child in the womb already possesses instincts, temperament, emotions not his or hers alone. Psychologically, every child develops not only in the world of its parents but within the larger world of its grandparents, of its "father's fathers'" and its "mother's mothers'".

There is a natural, organic relationship between the generations that is based on biology, verifiable psychologically and experienced as feelings through emotional involvement.

But unfortunately, for the most part, our society does not honor this bond. Indeed, many grandparents have been sheared from the foundation of the natural three-generational family, leaving the "nuclear" family with "surrogate grandparents", self-appointed "experts" and paid strangers.

Where have all the grandparents gone? If social theorists and government planners are to be believed, many grandparents have shed their identities and joined the ranks of the "aged", all the more tragic because there are more grandparents alive today than ever before. In the next sixty years, demographers predict, the over-65 population will double. Because of this "graying of America" and its effects on the economy, some experts envision an era of unprecented intergenerational strife in an age-segregated society where the aged will no longer have the love, respect, and support of their juniors. Children who have been abandoned by their grandparents will not be kindly disposed toward them. The social and emotional results of this abandonment are evident: a chaotic younger generation,a confused and harrassed middle generation and an uninvolved older

generation. A humane and conscionable society must change this deplorable state of affairs.

Are grandparents and grandchildren really important to one another?

Our inquiry into the nature of the relationship between grandparents and grandchildren over the past seven years has shown that not only are grandparents and grandchildren important to one another- they are indispensable for one anothers emotional well-being.

Three of the most important findings of our study show: *

-The grandparent-grandchild bond is second only in emotional importance to the bond between parents and children.

-Problems that are directly passed on from grandparent to parent are not DIRECTLY passed on from grandparent to grandchild. Nature gives grandparents another chance.

-Grandparents and grandchildren affect one another only BECAUSE THEY EXIST.

More specifically our study showed that:

Grandparenting is a natural instinct rooted deeply within our biological make-up and manifested by thoughts, feelings and behavior. Before the grandchild is born a grandparent undergoes a mental rehearsel for the role he will play as a grandparent. The way an individual views grandparenthood is dependent upon his experience as a grandchild and the way his society views the state of grandparenthood. Grandparenthood is not celebrated in an ageist society. When the grandchild is born special thoughts and feelings are experienced by new grandparents. They also experience an overwhelming urge to see and hold their grandchild...or to see a photograph if they are far from the child. When these powerful feelings are followed, and the new grandparent shares the child's early life,and helps the childs' parent- a vital connection is formed...an enduring emotional bond that is cemented by time together and emotional committment.

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*For details see"The Vital Connection. Grandparents/ Grandchildren" by Arthur Kornhaber M.D. and Kenneth L. Woodward. Doubleday/Anchor.

(3)

Children with vital connections to grandparents are special.

Children who have close relationships to at least one grandparent are different from those children with intermittent or infrequent grandparent contact.* Not only are these youngsters deeply rooted in their family and their culture, they are emotionally secure in the knowledge that there are many people who care about them. They are not ageist because they have older people who love them. They are not sexist because grandmothers and grandfathers do about the same things. These children have a role model for the future and therefore do not fear old age. They have a sense of social immunity- a place to go apart from their parents and the peer group when they have problems. Grandparents offer grandchildren an emotional sanctuary from the everyday world. Loved grandchildren feel a deep sense of pride in their families and their nation. They know that their behavior reflects upon the many people who care for them. Thus they are highly socialized.

Grandparents roles offer "emotional" work for the older generation.

Grandparents roles are unique. They are similar to the parents role because grandparents can fulfill the role of parents. They are different from parents roles because a grandparent has already been a parent, while a parent has not been a grandparent. Grandparents roles are diverse and dynamic. With time, their roles grow in breadth and depth as the vital connection with a grandchild becomes stronger. At first, a grandparents' role is "titular", conferred by the birth of a grandchild. Immediately, a grandparent becomes a living ancestor and a role model for the child...a future template for the childs own grandpaternity.
Once an intimate relationship is established grandparents become family historians and archivists and a living link to the past. As a mentor, grandparents teach children things that they learn nowhere else. When the childs parents aren't available grandparents play the role of nurturer- the second line of defense between children and social

* Only 10% of a national sample of over 700 children

(4)

agencies. Grandparents nurture grandchildren indirectly by supporting their parents in time of need- especially important in todays society which places great socio-economic stress on the parent generation. When grandparents and grandchildren spend a great deal of time together they become cronies-pals. In a deep relationship grandparents become wizards in the eyes of their young grandchildren. Wizards make bread from flour and pull fish from water...and take their teeth out- wondrous things to young children.
These roles give fulfillment to Elders* lives. They are the culmination of a lifetime accumulation of knowledge and wisdom and emotional experience applied to the rearing of their young. It is, as Erik H. Erikson calls it, "generativity" in its most basic form.

Grandparent Visitation Rights

Thus grandparents and grandchildren belong together because they have a direct relationship- exclusive from their all important relationship to the middle generation.
Concerning the issue of grandparents visitation rights it is therefore obvious that grandparents and grandchildren have a RIGHT to celebrate their relationship with one another as long as a grandparent is capable of just being with their grandchild. This is clear in light of the findings of our studies which show that grandparents rarely commit the same mistakes twice...they do not hurt their grandchildren. Most children who were angry at their grandparents felt that way because their parents were angry at their grandparents. Their anger was most often due to the fact that they mirrored their parents perception of their grandparents. Left alone with their grandparents they were quite happy, although they were hesitant to report this to their parents.
It is therefore clear that in cases of family feuds, where death or divorce creates "blended" families that wish to "divorce" grandparents from their grandchildren, the law should support the RIGHT of the child to have access to a beloved grandparent. (see proposed Uniform Visitation Rights)

*The role of grandparent is not limited to that of biological grandparent. Elders can also fulfill a "surrogate" grandparent role for the young and for themselves.

Grandparents Must Come Of Age In America

We live in an aging society that has no function for the aged. Real grandparents- functioning grandparents- offer many of the solutions to the problems of alienation and generational separation that plague our society. Our study shows that grandparenting is the only human function that supplies a pattern whereby the elderly, who fulfill their role as grandparents, biological or not, can be loved and respected and useful to their society. It is the true and natural work of old age. Grandparents have only to assume their rightful position as grandparent to their family and elder in the community to assure themselves an important place in their world and a meaning to the latter part of their lives.

The Foundation For Grandparenting is dedicated to finding ways to help grandparenthood become a celebrated rite of passage and to raise the public consciousness concerning grandparenthood as an important and natural life stage. In addition we are designing projects that will demonstrate the value of a multigenerational society where the old and young work together.(See Centrum Project).

The federal government would do well to energetically suppport such projects by setting up a department of Intergenerational Studies and Projects, as a new agency or under the aegis of an existing one, that would be dedicated to re-knitting the generations and promoting healthy and vibrant three-generational families. This endeavor would not only supply "emotional" work for the elderly but would create a nation of well-loved youngsters who could change the emotional tone of America in only twenty years. Our studies have demonstrated that this is possible by giving each youngster dedicated and loving elders and plenty of time with them. This is what the Centrum is all about. This must be done before we raise a generation of youngsters whose only knowledge of the elderly will be the inane images offered to them by television.

Tel. (914) 241-0682

FOUNDATION FOR GRANDPARENTING
10 West Hyatt Avenue
Mt. Kisco, New York
10549

Uniform Grandparental Visitation Rights--

(1) Notwithstanding the award of any child by adoption, dependency, custody, relinquishment, or otherwise, all children shall be entitled to have reasonable grandparental visitation, and every grandparent shall be entitled to reasonable visitation rights unless the court finds after a hearing that visitation by a grandparent would endanger the child's physical health or significantly impair his emotional development.

(2) The court may make or modify an order granting or denying grandparental visitation rights whenever such order or modification would serve the best interests of the child; but the court shall not restrict a grandparent's visitation rights unless it finds that the grandparental visitation would endanger the child's physical health or significantly impair his emotional development.

(3) The term "grandparent" as used in the act shall include all of the natural and adoptive parents of all of the child's natural and adoptive parents.

Roger Stevens

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THE CENTRUM PROJECT

A Five-Year Demonstration Project Of The
FOUNDATION FOR GRANDPARENTING

I - The Problem

In contemporary America the generations live in different worlds. Each generation, isolated within its respected social stratum: the young at school or in other caretaking institutions, the middle generation engaged in the work world, and the elder generation isolated unto itself. Many of today's children are in a world peopled by too few adults.

People of different generations spend little time with one another. The greater part of their time is spent among their age-peers, thus bringing about an appalling similarity of experience that fosters "ageism" and places generations in adversarial roles. Young children are warehoused in day-care centers at a time in their lives when they need deep, close, reliable, and long-term relationships. In "centers" and schools they are exposed to repeated separations from teachers, due to staff turnover and grade promotion which prevents the forming of close attachments.

Too often the classroom population is disproportionate to the affordable teaching staff. The "factory" school system is the primary mode of education available to our young today. Childrens' emotional, spiritual and creative needs are not met

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by such a system. Human, emotional values are insufficiently taught in our technologically oriented schools.

The aged are isolated from the young by their own attitudes and because there is no "life after work" for them. The wisdom and experience they have accumulated over a lifetime has no expression in our culture. After work there is little future or need for elder Americans.

The middle generations are caught between their need to parent and powerful socioeconomic pressures that often require both parents to leave home to work - abandoning their children to "paid strangers."

With the increasing divorce rate, and more and more "blended" families, generational stratification is increasing; more and more grandparents are moving away from their families. The roles that elders play for the young are being dissolved. Research shows that language and tradition, handed down from grandparent to grandchild during the child's early years, is, for the most part, being lost to the present generation of youngsters who are being raised in greater and greater isolation - with the television set replacing people in their lives. Grandparents/Grandchildren: The Vital Connection by Arthur Kornhaber, M.D. and Kenneth L. Woodward documents these findings in greater detail.

II - A Solution

The object of the Centrum is to bring the generations together by fostering personal attachments and free-flowing communication between the young and the old. This is achieved

simply by having them all spend a great deal of time together in the same place. It is in this type of emotional climate that "vital connections" are formed. Not only are the "aged" supplied with a "job" but the young flourish and learn from caring and attentive elders what they can learn nowhere else. The knowledge that elders have accumulated over a lifetime can be passed on to those who are more than eager for it.

Numerous other benefits are offered by a Centrum. It is the optimum social environment for children who need adult attention, i.e. children with learning disabilities, from broken homes or no home at all. The "treaters" are the grandparents who will have the time to teach, nurture, and serve as role models for the youngsters.

It is our hope that, one day, the Centrum concept will be the primary model for elementary school education and for community care of the young and the old in our society.

A - Structure

The Centrum will be housed in a large building with space for the activities of several hundred people. This facility may be a presently existing school or other suitable structure. The "pilot" Centrum will accomodate eighty people. It will have classrooms, assembly rooms, workshops, kitchen, an "attic" and a "front porch." It will be near a park and a body of water (where Grandpa can teach fishing).

B - Operation

Buses will transport the day-care children, school children,

and elders to the Centrum. The Junior High and High School students who will also participate in Centrum life will be bused in and out during the day. Parents will supply their own transportation when they come to assist. The Centrum will geographically occupy a prominent place in the community, with easy access to other community institutions.

C - Staffing

The Centrum will be administered by a Director and Assistant Director who will see to the operation of the facility, assisted by a full-time secretary. The Director will also be in charge of the research.

"Teams" of five children and one grandparent will be formed, and every five "teams" assigned to a teacher. The demonstration project will include seventy-five children, fifteen elders, three teacher-supervisors, and one "rotating" teacher. Of the seventy-five children not more than 30 percent will be under the age of five. In addition, a volunteer staff from the community and the junior and senior high and community colleges will be encouraged to participate.

----Grandparents will be encouraged to meet with the families of their "grandchildren."

----Grandparents will stay with the children until the children are promoted to junior high school. Once promoted, they will return to the Centrum to work with new youngsters and to maintain contact with their "grandparents." Thus children will not have to undergo unnecessary repeated losses of teachers and grandparents they have come to love.

D - Program

As the Centrum is multigenerational, it will be like a one-room schoolhouse in spirit:

----Academic work will be emphasized, with a focus on doing one's best rather than in competition with others.

----Personal and creative skills - handcrafts, music, painting, cooking and so forth - will be taught by grandparents.

----Social and emotional skills will be augmented using the grandparent as mentor. Language and ethnic history will be stressed wherever possible.

----Grandparents will serve as tutors for children who need remedial work. No childs' individual needs will be ignored. Grandfathers, particularly, will be recruited to supply the young with the male role models so sorely lacking in our society.

E - Research Syllabus

Ongoing clinical research will demonstrate the benefit of the Centrum project. The children's I.Q.'s will be tested, and other personality factors such as self-image, their feelings about older people, their degree of alienation and depression. School performance will be closely monitored.

Elders also will be tested for personality, self-image, and depression.

Tests will be administered annually during the five-year span of the demonstration project. The same tests will be given to a control group of seventy-five children attending a "regular" school. The control group will be an integral part of the demonstration project.

III - Objective

A - Children

The Centrum's goal is to produce a generation of children

who have received the attention and caring of elders and who have newly enjoyed all the benefits that the young reared by grandparents have previously experienced. We speculate that children attending the Centrum will feel loved and cared for; they will be highly socialized and will feel greater emotional security and be better rooted in their society than their peers. They will not be "ageist" nor fear old age. They will be exposed to ways of doing things other than those offered by their parents, their peers, or the media. Our research has amply demonstrated these facts.

B - Elders

Older people will be "energized" by their contact with the young. They will once again feel useful and needed. The Centrum can give meaning to their lives, bolstering ego and self-image, and even offer paid employment for "emotional" work.

C - Parents

The generation in the middle, the parents of the children, will benefit from the feeling of security in knowing their children are well tended in their absence. (The Centrum will be open from 8:00 a.m. to 9:00 p.m.).

D - Community

The Centrum will become the emotional heart of the community. We intend that it will reknit the generations and create a true multigenerational society in which the young, the middle, and the old mutually nurture and care for one another, each in their own fashion and turn.

Arthur Kornhaber M.D.

NATIONALLY ACCLAIMED

No matter how grandparents act they affect the emotional well being of their grandchildren, for better or worse, simply because they exist.
Every time a child is born, a grandparent is born too.

"...a major contribution to self understanding in a world in which everyone has been left reeling from the pace and direction of social change over the past two generations."
...The Nation

"This is a new gospel song that we out to start singing more frequently and louder. (The authors) have given us the words and the music. Now to get them sung.
...Karl Menninger M.D.

"The case studies in this book represent a first foray in an area left unexplained by developmental researchers. There are lessons here for social scientists, but even more for our alienated society."
...Prof. Urie Bronfenbrenner

"...a story of love that is rarely told and never more convincingly or lovingly." Prof. Phillip Zimbardo

"...a landmark study." Sanford I.Finkel M.D.

"...appealing and timely." Psychology Today

For the first time, Grandparents/Grandchildren examines the nature of the relationship between grandparents and grandchildren and its expression in contemporary American society. The Agenda for grandparents is a clarion call for grandparents to assume their place as the foundation of the three generational family- and tells them how to do it.

GRANDPARENTS GRANDCHILDREN

THE VITAL CONNECTION

ARTHUR KORNHABER, M.D. AND KENNETH L. WOODWARD

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Mr. BLANCATO. Dr. Derdeyne.

STATEMENT OF DR. ANDRE DERDEYNE

Dr. DERDEYNE. I appreciate the opportunity to address the staff members of this committee.

Mr. BLANCATO. It is no less important in terms of the fact that the hearing record is complete.

Dr. DERDEYNE. Please permit me the joke. This is, however, not a joking matter. There certainly have been plenty of tears, sadness, fury, and tales of injustice here. I am a bit concerned in that I see myself as providing some balance here, which in view of what else has gone on today, will probably be perceived by some of the people here as being hostile to the grandparent rights movement. It is not, but please bear with me.

I am a child psychiatrist. I am director of the child and family psychiatry training program at the University of Virginia. As time goes on, my work has revolved more and more about divorce, and about the complexities of the family regarding divorce. I am primarily a child psychiatrist. On those occasions when I go to court I make certain that I am a witness for the court. I see all parental parties. I do not go to court to help one parent win a custody suit against another, but in order to do the best I can for the child involved. Preferably, I am able to keep people from litigating the custodial issue. I attempt to make certain the court date leaves us 2 or 3 months so that there is time to work things out with all the people involved.

GRANDPARENTS VISITATION: THE SPECTRUM FROM HEALTHY FAMILY RELATIONSHIPS TO THE EXERCISE OF RIGHTS

If one leaves the word "right" out of it, the term "grandparent visitation" has a wholesome sound to it.

Continuing contact between grandparents and grandchildren is part of the normal course of family life. When we consider grandparent visitation as a legal issue, however, the situation changes markedly. The law of grandparent visitation, as well as other custody and visitation law, defines the bottom line in relationships. Law which regulates human regulations is necessarily a blunt instrument because it deals in relationships that have failed, where the finely tuned reciprocal aspects have ceased to function.

Visitation laws and visitation determinations by courts are reflective of difficult contentious situations. The visitor is effecting a forced entry over the resistance of the custodial parent.

Continuing contact of grandparent and grandchild may be insured by successful litigation, but the adults' struggles, anger, or residual resentment can have some very unfortunate consequences for the child, which brings us to the central issue which I wish to bring to the attention of this subcommittee, the conflict of loyalties.

CONFLICT OF LOYALTIES

In a book titled "Beyond the Best Interests of the Child," child psychoanalysts Anna Freud and Albert Solnit, and a professor of family law, Joseph Goldstein, articulated their concerns about the loyalty conflict for children after divorce. Their comments pertain

to the parents, but the principle of conflict between a parent and an emotionally close grandparent would be the same. The authors state that:

> Children have difficulty in relating positively to, profiting from, and maintaining the contact with two psychological parents who are not in positive contact with each other.

I might add that in a couple of the cases that people have told about, at this hearing, were the law to go along with Goldstein, Freud and Solnit's recommendations about psychological parenthood, these cases would not come under grandparent visitation problems, but under custody issues, and the people telling their stories here would from the facts presented clearly be given custody of the child because they were the psychological parents and providing a good home. These people Goldstein, Freud, and Solnit, are not as radical as they might seem.

These authors accord to the loyalty conflict such importance that they would have the custodial parent entirely in control of visitation, whether with the noncustodial parent, grandparents, or others. This holding has been subjected to considerable criticism. In the second edition of "Beyond the Best Interests of the Child," the authors elaborated their position on visitation:

> We reasoned, always from the child's point of view, that custodial parents, not courts or noncustodial parents, should retain the right to determine when and if it is desirable to arrange visits. We took and continue to take this position because it is beyond the capacity of courts to help a child to forge or maintain positive relationships to two people who are at cross-purposes with each other because, by forcing visits, courts are more likely to prevent the child from developing a reliable tie to either parent; and because children who are shaken, disoriented, and confused by the breakup of their family need an opportunity to settle down in the privacy of their reorganized family with one person in authority upon whom they can rely for answers to their questions and for protection from external interference.

This society and its courts find this view quite unacceptable because it runs so counter to the interests of the adults to have contact with their children. However, these authors' ideas regarding children's loyalty conflicts reflect immensely important issues to any child attempting to relate to important adults who are in conflict with each other.

I offer two examples of children involved in their parents' difficulties. The first comes from Henry James in his 1906 work, "What Maisie Knew". This novel sensitively describes a situation of a young girl caught in the conflict of her parents. Custody was split between her parents, 6 months with one and 6 months with the other.

They had wanted her, not for any good they could do her but for the harm they could, with her unconscious aid, do each other. She should serve their anger and seal their revenge, for husband and wife had been alike crippled by the heavy hand of justice which, in the last resort, met on neither side their indignant claim to get, as they called it, everything. If each was only to get half, this seemed to conclude that neither was so base as the other pretended or, to put it differently, offered them as both bad indeed since they were only as good as each other.

The mother had wished to prevent the father from, as she said, so much as looking at the child. The father's plea was that the mothers's slighted touch was simply contamination. These were the

opposed principles in which Maisie was to be educated; she was to fit them together as she might.

The second example is that of a child in my own practice. This markedly depressed 8-year-old boy had been overwhelmed for the past 3 years by the intense postdivorce struggles of his parents. This included things like when his father appeared at the end of season soccer picnic, his mother became furious and made him come home.

Upon being asked three wishes, he said that he would like a time machine in order to go back in time. When I asked if that was so that he could go back to make his parents' marriage better, he tearfully responded that it was. He had no other wishes. Instead of this 8-year-old entering the expanding world of friendships, soccer, and whatever; he spent most of his time concerned with, preoccupied with, and fearful of the conflict between his parents.

These examples have to do with the divorce of parents; the position of the child, however, is similar in any situation where the child is trying to relate to psychlogically important adults who in Goldstein, Freud, and Solnit's terminology "are not in positive contact with each other." The child's feelings of distress arise from his or her internal conflict, which feels the same whether it relates to two parents or to a parent and a grandparent who are in conflict.

Children caught in even the mildest conflict between their divorced parents frequently volunteer or acknowledge their perception that their being with one parent makes the other parent mad or sad. In some more severe instances, the pain to the child of going from one parent to the other is so great that the child comes to wish to stay with one parent and not to visit the other because of the relief from internal turmoil.

WHAT IS IN THE BEST INTEREST OF THE CHILD IN GRANDPARENT VISITATION

First of all, the ideal situation for the child is for all the adults to maintain communication with each other and to be able to cooperate with each other with regard to the child. This facilitates the child's being able to maintain contact with grandparents and others of importance from the past. If that situation does not obtain, then the first response might be to seek help from a therapist or another helping person who might be able to gain the confidence of all the adult parties. What is being strongly advocated in this hearing, of course, is that the grandparent go to legal means to achieve visitation.

Whether grandparent visitation is awarded or not depends upon the court's assessment of the value of continuing the child's relationship with the grandparent weighed against the amount of disruption to the child's immediate family unit and the amount of animosity the various adults hold for each other. This approach appears to me reasonably suited to deal with the major issues involved. However, I think that courts do not sufficiently appreciate the significance and destructive potential of loyalty conflicts to the child, whether it is parent against parent or parent against grandparent.

Although important relationships between grandparents and grandchildren can be salvaged by legal means, under these types of circumstances what is achieved can be far less than ideal. Contact with grandchildren achieved by less adversary means is surely more satisfactory and more likely to be maintained through the years than it is after a successful legal assault.

RECOMMENDATIONS

Concerns grandparents have about losing contact with their grandchildren after divorce, death, or other family disruption affecting the children's parents are certainly understandable, to say the least. I remain concerned, however, about grandparents joining what is all too often a postdivorce legal brawl already involving the child's parents.

All of you know perhaps personally, and maybe through contact with friends or other people, what marital separation, for example, does to many people. How many nice, capable, friends do you have, who are so distressed, so upset, that they engage in bizarre, angry, or furious, behavior, which is destructive not just to others but also to themselves.

The changes in the field of child custody and visitation in the United States which have occurred over most of the last 300 years have evolved gradually as part of other social changes. In contrast, laws upholding grandparents' rights to visitation have burst quite recently upon the scene.

What happens when grandparents are successful in gaining access to children, to use the legal term, as a result of emotionally charged and expensive legal contests?

What happens when they fail? When I wrote this I had not heard the testimony of this morning, but it is obviously horrifying to the people who have told their stories in this hearing.

Are there other approaches with less destructive potential than the legal one?

Dr. Kornhaber has presented his impression that grandparents as a group are particularly able to remain above the postdivorce fray and thereby are able to contribute positively to their grandchildren. Indeed, in instances where parental contention is high or parental functioning is impaired by depression, which are common situations, grandparents may be in a unique position to provide their grandchildren a very necessary emotional haven.

In my own experience, grandparents' roles after their child's divorce have varied from very constructive ones to being completely caught up in attacking their child's former spouse or even attacking their own child, with grave consequences for their grandchildren. What characteristics differentiate grandparents whose roles are more likely to be constructive from those whose contributions are more likely to detract from their grandchild's well-being?

In Mrs. Highto's comments earlier, in which she spoke about grandparent's suffering from the parental generation's cruelty, hate, spite, and vengeance, she should have included grandparents exhibiting cruelty, hate, spite, and vengeance also, because grandparents have those emotions too. In these types of situations we are so threatened, we are shaken to the roots of our identity and our

being, and we get extremely mean and irrational, and this capacity is possible for all of us. We are all human.

THE NEED FOR RESEARCH

In sum, this is an area where the need for scientific study of the issues far exceeds the need for more changes in the State or Federal legal structure or practice. What is needed at this time is funding for comprehensive and expert research to provide answers to some of the questions posed above, and a host of others.

OTHER APPROACHES TO ENHANCING THE GRANDPARENT-GRANDCHILD BOND

On the other hand, I do not question the value to children of constructive grandparental involvement, and see great value in exploring other than strictly legal ways to enhance grandparent involvement and contact with their grandchildren. I see this as psychologically helpful in most instances to all the persons involved as well as providing a link with the past which is valuable for individuals as well as for our society as a whole.

I could also give a speech here about the positive aspects of grandparents to grandchildren, grandchildren to grandparents, and a few testimonials from my own family, but we don't need that. Sufficient to say, these are terribly important issues and horrible things are lost to everyone when they are lost. My concern is, can we simply pass a law and regain them?

Dr. Kornhaber has found probably the best way to facilitate the continuing contact of grandparents and grandchildren. His book is reminding the lay public as well as therapists of the importance grandparents and grandchildren can have for each other. This approach offers an impetus for change which introduces less potential for mischief than do coercive methods.

I think that in-spite of the pain and hopes of most of the people in this group here, establishing legislation will not adequately solve their problems. I must say that in this area, and the area of family law as a whole, I see too many instances where today's solution becomes tomorrow's problem. We are stuck with immensely difficults, complex human emotions having to do with loss and the inability to tolerate it, to be very constructive when awful situations occur such as have been described here today.

I do not think that the major solution is going to come out of the legal system. I do not see how it can. These are not legal issues.

Thank you.

Mr. BLANCATO. Thank you, Doctor.

I think under the terms of the unanimous consent agreement that was made by the chairman, we will assume the definition of conducting a hearing to be to continue to receive the testimony of the witnesses. If the two of you can remain behind in the event that the members when they return would like to ask questions—or we may ask you to respond to some questions in writing that we have prepared.

We would like to call the final panel at this point, and, if you gentlemen can wait, we will reserve some questioning for them.

The legal panel: Mr. Richard Victor and Dr. Judy Areen.

I am going to take the liberty, if I may, to request of the chairman and also in appreciation and recognition of Dr. Areen's time constraints, which have been prevalent for several hours now, that she precede Mr. Victor in giving her formal statement.

Dr. Areen?

PANEL 3—LEGAL VIEWPOINT, CONSISTING OF RICHARD S. VICTOR, ATTORNEY, OAK PARK, MICH.; AND JUDITH AREEN, PROFESSOR OF LAW, AND PROFESSOR OF COMMUNITY AND FAMILY MEDICINE, GEORGETOWN UNIVERSITY MEDICAL CENTER

STATEMENT OF PROFESSOR JUDITH AREEN

Professor. AREEN. I will present a summary of my statement.

I understand there is permission to submit my full statement for the record.

Mr. BLANCATO. Without objection.

Professor AREEN. It is with great pleasure that I appear before this subcommittee because you are dealing with a subject of great importance—as all our speakers have underlined—ties between grandparent and grandchild. The Justices of the Supreme Court have, in fact, recognized the importance of this relationship.

Let me share with you briefly some of their words from a 1977 decision.

> . . . Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural.
>
> Ours is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition.

If your task were simply to provide support for such extended family ties in the face of unwanted government intrusion, as was the case in *Moore* v. *City of East Cleveland,* my talk would be briefer and your day shorter. But you are faced with the much more difficult problem of deciding what is an appropriate response by the government when there is a conflict between the members of a particular family.

As a general guide, I would urge adherence to that familiar standard of doing what is in the "best interests of the child." While it has been widely—and I would add appropriately—criticized for being too vague, the best interests standard does at least direct the focus of concern to the child who is the person likely to suffer most when there is a conflict between adult members of a family.

It is possible to apply the standard in ways that make it less vague, moreover. This is a way to constrain some of the abusive discretion by individual judges that we have heard described this morning.

I would suggest that the subject of grandparent visitation might be addressed by several well-chosen presumptions which are a way of restraining judicial discretion. For example, when a child has developed normally, and both parents and all grandparents are fit caretakers, it would seem sound to presume that a parent's wish to have the child visit with that parent's parents should be given pre-

sumptive weight even in the face of objections from that parent's former spouse. Notice that I am recommending a presumption. It could and should be rebutted in situations in which the former spouse proves to the court that contact between the child and grandparents in question would not be good for the child.

Why have I used words like "presumption," "prove," or "rebutted", which all have the ring of courtroom to them? It is precisely because the courtroom remains in our system of government the forum of last resort for families who cannot resolve their disputes privately.

Clear presumptions that are followed in applying the standard in courts, of course, can decrease rather than increase litigation, by making clear to family members beforehand what most probably would happen if they were to go to court.

Given the cost of litigation in time and emotions, as well as money—as we have heard described again and again this morning—many will choose, and I submit that would be a positive change, to follow the presumptions in their private negotiations.

This is a way mediation might be implemented. If you can mediate a solution acceptable to the parties on the private basis, it is preferable to going to court.

We also have to consider, however, what happens when the mediation breaks down. That is why the courts are the forum of last resort.

The proper application of the best interests standard is less clear when one parent dies, for then he cannot indicate directly his views on whether his parents should be able to see his child. Indirect evidence may be available, however, and if it demonstrates to the court that the parent would appear to have wanted contact to continue after his death, then the same presumption I advocated above when a living parent supports contact, appears appropriate.

Any presumption in favor of continued contact should be strengthened, moreover, in my view, when there is evidence that the grandchild has established a relationship with a particular grandparent.

For many years, unfortunately, most courts in this country have held that grandparents may not be granted visitation rights unless the custodial parent is proven unfit. Fortunately, a growing number of State legislatures, sympathetic to the value of contact with grandparents, have passed statutes in the last dozen years that establish a right of visitation for grandparents. These statutes do not condition the right on proving the custodial parent unfit, but only on proving that the visitation is in the best interests of the child involved.

More than 40 States have now passed statutes on this issue. Let me refer briefly to three that I set out at length in my written testimony.

California's statute is of interest because it applies not only to grandparents but to any other person having an interest in the welfare of the child. There may be situations where it might be another relative or even a biologically unrelated person who has been so important to that child that visitation is appropriate.

Second, the Connecticut statute anticipates one of the issues raised earlier this morning by applying to children who are illegitimate and acknowledging biological ties even in that situation.

Finally, the Minnesota statute, the most comprehensive of the three that I include for your information, struck me as important, first because it applies not only to grandparents, but to greatgrandparents.

As someone who has grandparents who are 95 and 93, and in good health in Vandalia, Ohio, and 2-year-old son, I would want their rights protected as well as those of my parents.

In addition, Minnesota specifically recognizes strong protection when the children have lived with their grandparents for a year or more, a provision that I think would have resolved differently at least one of the cases we have heard described today.

Until now, I have been addressing the problem of what should happen when the parents or guardians of a particular child are in disagreement about whether there should be contact between a grandparent and grandchild.

The difficult issue of how best to implement such policies remains. We need procedural as well as substantive reforms.

Most courts have not granted access to courts to grandparents after a divorce. Fortunately, the statutes I have already alluded to in many States do permit intervention by the grandparents even after divorce.

Unfortunately, though, a number of these statutes have not yet addressed the problem of what should happen when a custodial parent remarries and the new spouse adopts the child. Adoption statutes, you understand, generally cut off all legal ties to a child's biological parent and family.

Although these statutes were aimed primarily at resolving issues of inheritance, a number of courts—mistakenly, in my view—have construed them to cut off the visitation rights of the grandparents as well.

A notable exception is a decision of the Supreme Court of New Jersey, in *Mimkon* v. *Ford*, decided in 1975, where that court, faced with the conflict between, on the one hand, a statute that permitted visitation to grandparents, and, on the other, an adoption statute that appeared to cut them off, reached the conclusion that visitation should be permitted after adoption.

Let me quote a little bit of their explanation, because it summarizes my own thoughts on the issue.

> . . . Interference by a natural parent with the relationship between the child and the adopting parents introduces alternative and conflicting authority figures in the child's life, creating tremendous emotional tension on the child and ultimately threatening to undermine the authority of the adoptive parents and their ability to make parental decisions. Grandparents ordinarily play a very different role in their child's life; they are not authority figures and do not possessively assert exclusive rights to make parental decisions. At best they are generous sources of unconditional love and acceptance, which complements rather than conflicts with the role of the parents. . . .
>
> It is biological fact that grandparents are bound to their grandchildren by the unbreakable links of heredity. It is common human experience that the concern and interests grandparents take in the welfare of their grandchildren far exceeds anything explicable in purely biological terms. . . .
>
> In view of this, we can only say that it is proper that in the unfortunate case of parental separation or death, grandparents should sometimes have privileges of visi-

tation even over the objections of the adoptive parents. It is not only the grandparent's continued right to be with him, but also the fact that in such cases, the continuous love and attention of a grandparent may mitigate the feelings of guilt or rejection which a child may feel at the death of or separation from a parent, and ease the painful transition.

I have focused until now primarily on the positive aspects of grandparent visitation. But even the New Jersey Supreme Court cautioned that such visitation should be authorized over parental objections only when it would be in the best interests of that particular child, warning that courts should not permit visitation by a particular grandparent when it would undermine the authority of the adoptive parents or otherwise create psychological conflict for the child.

Justice Sullivan dissented from the majority position, noting:

Here the trial judge ordered . . . visitation over the objections of the child, as well as the child's father and adoptive mother who felt that [the grandmother] has been a disruptive influence in their family unit. . . . It may be that the child has been conditioned against her grandmother. If so, this is to be regretted, but if nurturing the relationship between grandparent and grandchild is to be had at the expense of the child's well being and the family unit in which she now lives, I have no doubt as to what a court should do.

Justice Clifford, in dissent, added:

Given the objection to visitation—be it well-taken or otherwise—I foresee continued acrimony between the parties and a tug-of-war with Jill in the middle. . . . Judicial interference in this sensitive area should generally be undertaken only with the greatest hesitancy and in this case not at all.

This division among thoughtful decisionmakers should, if nothing else, caution us against rigid or mechanical approaches to intrafamily conflicts.

To sum up my personal recommendations, I believe the trend of the last dozen years to permit grandparent visitation when it is in the best interests of the grandchild should be praised and indeed extended to those few States that have not yet passed appropriate statutes.

Indeed, I would recommend amending those existing statutes which do not at present establish presumptions in favor of visitation in the conditions I have outlined above.

I would also modify existing adoption statutes to permit grandparent visitation following adoption by a stepparent, the position espoused by the majority of the New Jersey Supreme Court in *Mimkon* v. *Ford*.

At the same time, I want to underscore the importance of always making these decisions in the context of the lives of a particular child and a particular grandparent. The law can coerce outward behavior, but if the price is excessive psychological turmoil for one child, it is too high.

In view of the complex nature of the issue you are addressing today, it becomes even more important to determine what is the most appropriate role for the Federal Government to play. On the one hand, both the variation in, and relatively recent date of, State legislative protection for grandparent visitation suggest it would be easier if we had a single, national standard.

On the other hand, child custody matters have traditionally been left to the States. The one Federal statute that touches this area was explicitly intended to avoid inconsistent decisions by the courts

of two or more States involving the custody of one child. The lack of Federal standards governing custody decisions reflects an important constitutional constraint: even if Congress wanted to act, it does not appear to have the constitutional authority to mandate standards for child custody or visitation.

There remains the role of providing guidance to States. It has been proposed, by some, that Congress might fund the drafting of a model act.

While that step does not pose constitutional hurdles, it also may not accomplish much other than providing Federal funds to a consultant or two in view of the rather dismal history of model acts drafted by the Government ever being adopted by States.

There is, by contrast, a quite distinguished record that has been compiled by the National Conference of Commissioners on Uniform State Laws, not because they are necessarily any wiser, but because the very process of working a problem through that body, composed as it is of judges, law teachers and members of the bar from each of the States, the District of Columbia, and Puerto Rico, insures both national exposure, and a test of whether a proposal is politically viable.

In 1965, the conference began work on a Uniform Marriage and Divorce Act. Unfortunately, that act, while it establishes standards and procedures for determining custody and visitation, deals only with visitation by parents. Visitation by grandparents—or any other adults who have developed strong ties with a child—is not discussed at all.

At this point in time, seven States have adopted the UMDA. A useful next step might be to encourage the conference to revise the UMDA.

I was delighted to hear the chairman of this subcommittee indicate he was going to use his influence to urge the conference to revise the UMDA or even to promulgate a separate, new uniform act that deals specifically with the issue of grandparent visitation.

In the end, our Constitution provides that there is no shortcut to persuading the legislature and the bench in each and every State, and the District of Columbia, to provide adequate protection for grandparent visitation, not simply for the sake of grandparents, or even because it will benefit the grandchildren, but because we will all be strengthened in this Nation if we both acknowledge and support family ties across the generations.

[Professor Areen's prepared statement follows:]

PREPARED STATEMENT OF JUDITH AREEN, PROFESSOR OF LAW AND PROFESSOR OF COMMUNITY AND FAMILY MEDICINE, GEORGETOWN UNIVERSITY, GEORGETOWN UNIVERSITY MEDICAL CENTER

It is with great pleasure that I appear before the subcommittee today because you are addressing a subject of such great human significance—the ties between grandparent and grandchild.

The Justices of the United States Supreme Court, in a plurality opinion, underscored this significance in 1977 when they observed:

". . . Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural.

Ours is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. The tradition of uncles, aunts, cousins, and especially

grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition. Over the years millions of our citizens have grown up in just such an environment, and must, surely, have profited from it. Even if conditions of modern society have brought about a decline in extended family households, they have not erased the accumulated wisdom of civilization, gained over the centuries and honored throughout our history, that supports a larger conception of the family." *Moore* v. *City of East Cleveland*, 431 U.S. 494 (1977)

If your task were simply to provide support for such extended family ties in the face of unwanted government restrictions, as was the case in *Moore* v. *City of East Cleveland*, my talk would be briefer and your day shorter. But you are faced with the much more difficult problem of deciding what is an appropriate response by the government when there is a conflict between the members of a particular family.

As a general guide I would urge adherence to that familiar standard of doing what is in the "best interests of the child." The best interests standard has with good reason become the universal principle followed by courts in this country for resolving conflicts over custody of, or visitation with, children. While it has been widely criticized for being too vague, the best interests standard does at least direct the focus of concern to the child who is the person likely to suffer most when there is a conflict between adult members of a family.

It is possible to apply the standard in ways that make it less vague, moreover. I would suggest that the subject of grandparent visitation might be addressed by several well chosen presumptions. For example, when a child has developed normally, and both parents and all grandparents are fit caretakers, it would seem sound to presume that a parent's wish to have the child visit with that parent's parents should be given presumptive weight in the face of objections from that parent's former spouse. Notice that I am recommending a presumption. It could and should be rebutted in situations in which the former spouse proves to the court that contact between the child and grandparents in question would not be good for the child.

Why have I used words like "presumption," "prove," or "rebutted" which have the ring of courtroom to them? It is precisely because the courtroom remains the forum of last resort for families who cannot resolve their disputes privately. Clear presumptions that are followed in applying the best interests standard in courts, of course, can decrease rather than increase litigation over such issues, by making clear to family members before hand what most probably would happen if they were to go to court. Given the cost of litigation in time and emotions as well as money, many will choose, therefore to follow the presumptions in their private negotiations.

If the parent who opposes contact with a grandparent is the child of that grandparent, by contrast, my sense is that the presumption should be against visitation. Why do I advocate a difference in result depending on which parent opposes? Because both presumptions reflect the common standard of allowing a parent to decide whether or not his parents should see his child. This standard in turn is a way of minimizing interference in a parent's rearing of his child, even by a former spouse.

The proper application of the best interests standard is less clear when one parent dies, for then he cannot indicate directly his views on whether his parents should be able to see his child. Indirect evidence may be available, however, and if it demonstrates to the court that the parent would appear to have wanted contact to continue after his death, then the same presumption I advocated above when a living parent supports contact, appears appropriate.

Any presumption in favor of continued contact should be strengthened, moreover, in my view, when there is evidence that the grandchild has established a relationship with a particular grandparent. Conversely, evidence of an especially strong relationship between a grandparent and grandchild might be sufficient to overcome an objection even by the parent who is the child of that grandparent.

For many years, by contrast, most courts in this country have held that grandparents may not be granted visitation rights unless the custodial parent is proven unfit.[1] Fortunately, a growing number of state legislatures, sympathetic to the

[1] Succession of Reiss, 46 La. Ann. 347, 15 So. 151 (1894) is generally recognized as the first case in which a grandparent actually sued for visitation privileges. The request was denied on two grounds: (1) a parent's obligation to allow a child is a moral but not a legal one; and (2) absent a showing that the custodial parent is unfit, the court should not order visitation. For more recent holdings see, e.g., Jackson v. Fitzgerald, 185 A.2d 724 (D.C. Mun. Ct. App. 1962); Lee v. Kepler, 197 So.2d 570 (Fla. Dist. Ct. App. 1967); Smith v. Painter, 408 S.W.2d 785 (Tex. Civ. Apps. 1966). See generally Note, Statutory Visitation Rights of Grandparents, 26 Cath. U. L. Rev. 387 (1977).

value of contact with grandparents, have passed statutes in the last dozen years that establish a right of visitation for grandparents. These statutes do not condition the right on proving the custodial parent unfit, but only on proving that the visitation is in the best interests of the child involved.

More than forty states have now passed statutes on this issue. A closer look at three of them will give you a good idea of the range of approaches adopted.

California has two relevant statutes. Civil Code § 197.5 applies when one parent is deceased. It provides in pertinent part:

"(a) If either the father or mother of an unmarried minor child is deceased, the children, parents, and the grandparents of such deceased person may be granted reasonable visitation rights to the minor child during its minority by the superior court upon a finding that such visitation rights would be in the best interests of the minor child.

"(b) In granting visitation rights to persons other than the parents of the decedent, the court shall consider the amount of personal contact between such persons and the minor child prior to the application for the order granting them visitation rights.

"(c) This section shall not apply if the child has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted pursuant to this section prior to the adoption of the child shall be automatically terminated upon such adoption."

When the parents are divorced but not dead, California provides in Civil Code § 4601:

"Reasonable visitation rights shall be awarded to a parent unless it is shown that such visitation would be detrimental to the best interests of the child. In the discretion of the court, reasonable visitation may be granted to any other person having an interest in the welfare of the child."

Connecticut, by contrast, provides for grandparent visitation even when the parents are not divorced or dead. General Statute § 46b–59 provides:

"The superior court may grant the right of visitation to any grandparent or grandparents of any minor child or children, upon an application of such grandparent or grandparents, whether or not such child or children are legitimate, except the court may not make an order with respect to the parents of the father of any illegitimate child or children unless the father has acknowledged paternity in writing, has been adjudicated the father by a court of competent jurisdiction or has contributed regularly to the support of the child or children. Such order shall be according to the court's best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable, provided the grant of such visitation rights shall not be contingent upon any order of financial support by the court. In making, modifying or terminating such an order, the court shall be guided by the best interest of the child, giving consideration to the wishes of such child if he is of sufficient age and capable of forming an intelligent opinion. Visitation rights granted in accordance with this section shall not be deemed to have created parental rights in the person or persons whom such visitation rights are granted. The grant of such visitation rights shall not prevent any court of competent jurisdiction from thereafter acting upon the custody of such child, the parental rights with respect to such child or the adoption of such child and any such court may include in its decree an order terminating such visitation rights."

Minnesota has the most comprehensive statute of the three, applying as it does to great-grandparents as well as grandparents. It also contains special provisions for deceased parents, divorce, and children who have lived with their grandparents for a year or more. Specifically, Minnesota Statute 257.022 provides

"Subdivision 1. When parent is deceased. If a parent of an unmarried minor child is deceased, the parents and grandparents of the deceased parent may be granted reasonable visitation rights to the unmarried minor child during his minority by the district or county court upon finding that visitation rights would not interfere with the parent child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the deceased parent and the child prior to the application.

"Subd. 2. When parent's marriage is dissolved. In all proceedings for dissolution, subsequent to the commencement of the proceeding and continuing thereafter during the minority of the child, the court may, upon the request of the parent or grandparent of a party, grant reasonable visitation rights to the unmarried minor child, after dissolution of marriage, during his minority if it finds that visitation rights would be in the best interests of the child and would not interfere with the parent child relationship. The court shall consider the amount of personal contact

between the parents or grandparents of the party and the child prior to the application.

"Subd. 2a. When child has resided with grandparents. If an unmarried minor has resided with his grandparents or great-grandparents for a period of 12 months or more, and is subsequently removed from the home by his parents, the grandparents or great-grandparents may petition the district or county court for an order granting them reasonable visitation rights to the child during his minority. The court shall grant the petition if it finds that visitation rights would be in the best interests of the child and would not interfere with the parent and child relationship.

"Subd. 3. Exception for adopted children. This section shall not apply if the child has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted pursuant to this section prior to the adoption of the child shall be automatically terminated upon such adoption."

Until now I have been addressing the problem of what should happen when the parents or guardians of a particular child are in disagreement about whether there should be contact between a grandparent and grandchild.

The difficult issue of how best to implement such policies remains. Certainly, procedural as well as substantive reforms in state law are needed. If courts do not grant some grandparents standing to bring their visitation disputes to court, any such policies are, of course, worthless. For example, the issue of grandparent visitation may not have surfaced during a particular divorce for both parents were then alive, and both arranged for the child to see their parents during part of their own time with the child. Later one parent dies. The remaining parent then remarries and his new spouse refuses to allow the child to see the parents of the deceased spouse. Unless access to court is available at this time, there will be no way for the grandparents to bring evidence to court as to why it would be in the best interests of the child for their relationship to continue.

Most courts have not granted access to courts to grandparents after a divorce. Connecticut is one of the few exceptions. See *Mirto* v. *Bodine*, 29 Conn. Supp. 510 (1972). The same statutes mentioned above that have established the principle in more than forty states that grandparent visitation can be permitted when it is in the best interests of the child, however, have also established new procedural rights for grandparents. Many permit grandparents to bring a habeas corpus proceeding to argue for visitation when their child has died and the custodial parent refused them access to their grandchild. Unfortunately, most such statutes do not specify what should happen when a custodial parent remarries and the new spouse adopts the child. Adoption statutes, you see, generally cut off all legal ties to a child's biological parent and family. Although these statutes were aimed primarily at resolving issues of inheritance, a number of courts have construed them to cut off visitation rights of the grandparents as well.

A noteworthy exception is the decision of the Supreme Court of New Jersey in *Mimkon* v. *Ford*, 66 N.J. 426, 33d A. 2d 199 (1975). Jill Ford was born to Joan and Donald Ford on July 2, 1966. Her parents separated prior to her birth, and were divorced November 4, 1968. Jill lived with her mother and maternal grandmother Rose Mimkon, until Joan died November 24, 1970. Donald then took custody of his daughter.

In June of 1969, Donald remarried. His second wife, Adele, adopted Jill on August 13, 1971. Rose Mimkon continued to visit Jill until Donald and Adele denied her further access. She then took the matter to court.

The New Jersey court faced apparently conflicting statutes. One established the right to authorize visitation by grandparents after death or divorce; the other appeared to cut off legal claims after adoption. The court reasoned, correctly I believe, that the adoption statute was designed primarily to apply to children placed for adoption when their biological parents are unwilling or unable to care for them. Protecting the relationship between the adopted child and the adopting parents from interference by the biological parents might be wise in most such cases. But here the deceased mother was a fit parent, the court noted, and moreover it was a grandparent who sought visitation.

The court continued:

"* * * Interference by a natural parent with the relationship between the child and the adopting parents introduces alternative and conflicting authority figures in the child's life, creating tremendous emotional tension on the child and ultimately threatening to undermine the authority of the adoptive parents and their ability to make parental decisions. Grandparents ordinarily play a very different role in their child's life; they are not authority figures and do no possessively assert exclusive rights to make parental decisions. At best they are generous sources of uncondition-

al love and acceptance, which complements rather than conflicts with the role of the parents.

"Thus, grandparent visitation involves a much lesser risk of threat to the physical or psychological well-being of the child or to the development of a healthy and natural relationship between the child and the adopting parents than might continued contact by the natural parent.

"It is biological fact that grandparents are bound to their grandchildren by the unbreakable links of heredity. It is common human experience that the concern and interests grandparents take in the welfare of their grandchildren far exceeds anything explicable in purely biological terms. A very special relationship often arises and continues between grandparents and grandchildren. The tensions and conflicts which commonly mar relationships between parents and children are often absent between these very same parents and their grandchildren. Visits with a grandparent are often a precious part of a child's experience and there are benefits which devolve upon the grandchild from the relationship with his grand parents which he cannot derive from any other relationship. Neither the Legislature nor this Court is blind to human truths which grandparents and grandchildren have always known.

"In view of this, we can only say that it is proper that in the unfortunate case of parental separation or death, grandparents should sometimes have privileges of visitation even over the objections of the adoptive parents. It is not only the ordinary devotion to the grandchild that merits the grandparent's continued right to be with him, but also the fact that in such cases, the continuous love and attention of a grandparent may mitigate the feelings of guilt or rejection which a child may feel at the death of or separation from a parent, and ease the painful transition. 332 A.2d at 203-05."

I have focused until now primarily on the positive aspects of grandparent visitation. But even the New Jersey Supreme Court cautioned that such visitation should be authorized over parental objections only when it would be in the best interests of the child, warning that courts should not permit visitation by a particular grandparent when it would undermine the authority of the adoptive parents or otherwise create psychological conflict for the child.[2]

There is, of course, a strong possibility of psychological conflict in such situations, precisely because the child's relatives have by definition been unable to resolve their differences without resort to the courts.

It was to avoid just such psychological turmoil that several experts in the field have argued against court ordered visits even by noncustodial parents. Thus Joseph Goldstein, Anna Freud, and Albert J. Solnit observed in Beyond the Best Interests of the Child:

"Children have difficult in relating positively to, profiting from, and maintaining the contact with two psychological parents who are not in positive contact with each other. Loyalty conflicts are common and normal under such conditions and may have devastating consequences by destroying the child's positive relationship to both parents."[3]

They recommend, therefore, that once it is determined who will be the custodial parent, it is that parent, not the court, who should decide whether the other parent should be able to visit the child.[4]

I acknowledge that forced visitation may have very negative consequences for a child. But I also believe this proposed cure may be worse than the original problem. Thus as Judge Dembitz has observed, "the disquiet that may attend court ordered visitation must be weighed against the child's needs for the psychological assets of the parents and the child's feeling of confusion and rejection that may follow the disappearance of the noncustodial parent."[5] Moreover, as Professor and Mrs. Strauss have written:

". . . [T]he social science data to support the proposition that a single official parent is preferable to two seems remarkably weak. . . . To be the child of a mother and father who dislike one another is, to be sure, an unfortunate life experience; and parents who would subject their children to conflicting loyalties, whether or not they remain married, are less than adequate to the task. Nonetheless, given a child with existing relationships to both, we know of no studies which show that the legal death of one parent, the complete subordination of the child to the other's possibly distorted now, is invariably the preferable step for its future development."[6]

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[2] 332 A.2d at 205.
[3] Goldstein, Freud and Solnit, Beyond the Best Interests of the Child 38 (1973).
[4] Id.
[5] N. Dembitz, Book Review, 83 Yale L. J. 1304, 1310 (1974).
[6] P. Strauss & J. Strauss, Review of Beyond the Best Interests of the Child, 74 Col. L. Rev. 996, 1002 (1974).

To return to grandparent visitation, the same division of opinion about whether it is proper to force visitation on an unwilling custodial parent appears in *Mimkon* v. *Ford*. Thus Justice Sullivan dissented from the majority position noting:

"Here the trial judge ordered . . . visitation over the objections of the child, as well as the child's father and adoptive mother who felt that [the grandmother] has been a disruptive influence in their family unit. . . . It may be that the child has been conditioned against her grandmother. If so, this is to be regretted, but if nurturing the relationship between grandparent and grandchild is to be had at the expense of the child's well being and the family unit in which she now lives, I have no doubt as to what a court should do."[7]

Justice Clifford in dissent added:

"Given the objection to visitation—be it well-taken or otherwise—I foresee continued acrimony between the parties and a tug-of-war with Jill in the middle. . . . Judicial interference in this sensitive area should generally be undertaken only with the greatest hesitancy and in this case not at all."[8]

This division among thoughtful decision-makers should, if nothing else, caution us against rigid approaches to intra-family conflicts.

To sum up my personal recommendations, I believe the trend of the last dozen years to permit grandparent visitation when it is in the best interests of the grandchild should be praised and extended to those few states that have not yet passed appropriate statute. Indeed, I would recommend amending those existing statutes which do not at present establish presumptions in favor of visitation when it accords with the wishes of the biological parent who is the child of the grandparent in question, particularly when the grandparent and grandchild have an established relationship. I would also modify existing adoption statutes to permit grandparent visitation following adoption by a stepparent, the position espoused by the majority of the New Jersey Supreme Court in *Mimkon* v. *Ford*.

At the same time, I want to underscore the importance of always making these decisions in the context of the lives of a particular child and a particular grandparent. The law can coerce outward behavior, but if the price is excessive psychological turmoil for one child, it is too high.

In view of the complex nature of the issue you are addressing today, it becomes even more important to determine what is the most appropriate role for the federal government to play. On the one hand, both the variation in, and relatively recent date of, state legislative protection for grandparent visitation suggest it would be easier if we had a single, natural standard.

On the other hand, child custody matters have traditionally been left to the states. The one federal statute that touches this area was explicitly intended to avoid inconsistent decisions by the courts of two or more states involving the custody of one child.[9] The lack of federal standards governing custody decisions reflects an important constitutional constraint: even if Congress wanted to act, it does not, in my view, have the constitutional authority to mandate standards for child custody or visitation.

There remains the role of providing guidance to interested states. It has been proposed, for example, that Congress might fund the drafting of a model act on this problem.

While that step does not pose constitutional hurdles, it also may not accomplish much other then providing federal funds to an underemployed consultant or two in view of the rather dismal history of model acts drafted by the government ever being adopted by states.

There is, by contrast, a quite distinguished record that has been compiled by the National Conference of Commissioners on Uniform State Laws, not because they are necessarily wiser than consultants to the Federal Government, but because the very process of working a problem through that body, composed as it is of judges, law teachers and distinguished members of the bar from each of the states, the District of Columbia and Puerto Rico, ensures both national exposure, and a test of whether a proposal is politically viable.

Founded in 1892, the Conference works "to promote uniformity in state laws on all subjects where uniformity is deemed desirable and practicable."[10] In 1965, it began work on a Uniform Marriage and Divorce Act (UMDA). Professor Robert J. Levy of the University of Minnesota and Professor Herma H. Kay of the University of California served as co-reporters (drafters) of the UMDA. It was approved in 1974

[7] 332 A 2d at 205–06.
[8] 332 A 2d at 207.
[9] The Parental Kidnapping Prevention Act of 1980, 28 USCA § 1738A.
[10] Uniform Laws Annotated iii (1979).

by the House of Delegates of the American Bar Association for passage in the states only after much debate about the sections governing the standards for divorce.

Unfortunately, the UMDA, while it establishes standards and procedures for determining custody and visitation, deals only with visitation by parents. Visitation by grandparents (or any other adults who have developed strong ties with a child) is not discussed at all.[11]

At this point in time seven states have adopted the UMDA. It has been more influential than this number suggests, however, for it has been a source of both policy and language for many state legislatures.

A useful next step might be to encourage the Conference to revise the UMDA or even to promulgate a separate, new uniform act that deals specifically with the issue of grandparent visitation.

In the end, our Constitution provides that there is no shortcut to persuading the legislature and the bench in each and every state to provide adequate protection for grandparent visitation, not simply for the sake of grandparents, or even because it will benefit the grandchildren, but because we will all be strengthened in this nation if we both acknowledge and support family ties across the generations.

Mr. BLANCATO. The subcommittee has been joined by Congressman Craig, who now assumes the role of chairman.

Mr. CRAIG [presiding]. All right.

Mr. Richard Victor, if you would go ahead with your testimony, please.

STATEMENT OF RICHARD S. VICTOR

Mr. VICTOR. Thank you.

I wish to thank, for the record, the chairman of this committee, Chairman Biaggi, for having these hearings on behalf of the grandparents that I have come in contact with in the State of Michigan.

There are literally hundreds of grandparents that have been involved in the organizations which have already been mentioned in support of legislation, both on a State basis and Federal basis, for, and dealing with, grandparents' rights to visitation.

I wish also to put on the record and thank Dr. Statuto, whom I have worked closely with, although we are a few miles apart—I in Michigan and her in Washington—in putting together material and getting these proceedings to go forward.

I think it should be known the hard work that the entire staff of Congressman Biaggi has been doing to put these forward.

For purposes of the record, I wish to ask that my written testimony be incorporated into the record. I will be reading from part of it. I will be deleting part of it and summarizing other parts.

Mr. CRAIG. Go ahead. That will be done.

Mr. VICTOR. Further, for purposes of the record, I think I should identify myself and who I am and what work I have done.

I am an attorney in private practice in the State of Michigan. In Michigan, I am recognized as a specialist in grandparents' rights cases. I have had extensive experience in trying and litigating these cases through the courts in Michigan.

I have appeared on several talk shows discussing this topic as recently as the day before we flew here, I appeared on two.

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[11] The UMDA in Section 402, the section that establishes standards for courts to follow in awarding custody, does include

"(3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests."

While the section might in some cases apply to grandparent, Section 407 on visitation speaks only of parent visitation.

I bring this to the committee's attention because of results of a poll provided by one of those shows, "Good Afternoon, Detroit," on WXYZ-TV, an affiliate of ABC. On that show, I appeared and made a presentation as the show's legal adviser, a capacity in which I serve for the station.

A question was asked for viewers to call in dealing with, should grandparents have rights to visitation in divorce cases, and in times when they are denied the rights to visitation.

I was informed after the 1-hour program that the response to this question was phenomenal. There were over 1,500 calls in this local area. They said that the highest rate of calls they ever received was 1,700. I failed to ask what the question was. I suspect, since it was Detroit, it probably was, should Sugar Ray Leonard fight Tommy Hearns?

But other than that, it was the largest response they had received. From the 1,500 calls received, the percentage was 70 percent favored grandparents having rights to visitation when they had been denied these rights and only a mere 30 percent opposed this.

For further background on myself, which I don't like to discuss, but hopefully it may bring some credibility to what I have to present to the committee, I am also an instructor in family law and have authored the family law courses at both Mercy College of Detroit and Oakland University, where I am currently on the faculty.

I am chairman of the Custody Subcommittee of the Codifications of Statutes Committee for the State Bar of Michigan and presently rewriting custody laws that will be submitted to our legislature. I am a member of the advisory committee for the Oakland School, for Woodland Hills Medical Center, and the Cambridge Institute for Mental Retardation.

I would now like to address the testimony.

In my work as an attorney in private practice in the State of Michigan, I have had numerous dealings with grandparents who have been denied the right to visit with their grandchildren.

Because of these denials, these grandparents were forced to seek court intervention to enforce rights which these grandparents felt were their rights inherently. Unfortunately, the rights which they have, if any, are statutory in nature. Therefore, my clients have been limited to what was set forth by State statute in the State of Michigan and the appellate decisions which interpret those statutes. They have only been able to be successful in receiving court intervention when legislation was provided by the State recognizing this issue.

Through our extensive research we have found various State statutes which deal with this topic and which will be discussed later in my testimony. Several of these State statutes have conflicts within the statutes, themselves, which has caused a great deal of confusion when they are interpreted by the courts. These conflicts arise in cases where there have been divorces or separations in families, death of a parent leaving surviving parents and minor children, children born to parents who were not married, or where questions of where a child should reside—between a parent and a grandparent—were submitted to a court.

In all of these cases, grandparents, whether maternal or paternal, were involved and wanted contact with their grandchildren. In very few cases have we dealt with grandparents fighting for custody of their grandchildren over a natural parent. The cases that we have primarily dealt with are of such a nature that grandparents only wanted to continue a relationship with their grandchildren that had been established and they wished to continue, but had been terminated arbitrarily by the legal custodian—usually the parent or parents—of the child.

Public attention has been drawn to this issue because of the deep emotions and the equities that are involved. I shall address, by way of a set of five factual scenarios, cases which I have handled and which I believe will show a definite need for legislative involvement.

Before I begin these, I wish to point out that 2½ years ago, when I started my—I will use the word crusade—dealing with the rights of grandparents and grandchildren in the State of Michigan, I was interviewed by several news reporters from local television stations.

Once we met, they came in and I talked to them, and I told them what we were doing with the legislature—they were doing stories on legislation we had been supporting in Michigan. When I finished the presentation, I realized that I had done a terrible job because the reporter turned to me and said, I didn't know grandparents could not see their grandchildren if they didn't want to.

I realized we had a long way to go to bring to light the problems that have arisen and that exist. When I read these five scenarios to you, I think you will understand how this does happen and how it could happen to anybody in this room.

Scenario No. 1: Husband and wife, following marital difficulties, have a divorce action filed and pending. Prior to a divorce judgment being entered, husband commits suicide, leaving a 3-year-old child of the parties. Husband's parents—grandparents—have maintained a close relationship with their 3-year-old grandson and continue that relationship following the untimely death of their son.

While wife is beginning her new life, grandparents have additional involvement with their grandchild, and in fact take care of him while wife begins her employment. Wife meets a man and they subsequently marry. Man—stepparent—adopts child. Stepparent is now the legal father of said child. Query: Who are the paternal grandparents of that child?

The grandparents are then told, "You can no longer visit or see grandchild again." What are their rights?

Scenario No. 2: Wife, following marital problems with her husband, leaves husband along with their 6-month-old daughter. While driving, following her departure, she is involved in a fatal automobile accident wherein she is killed. The 6-month-old child survives. Wife's parents—maternal grandparents—take care of infant grandchild until father of the child remarries. Remarried father and stepmother then have the child live with them. Grandparents continue to see the child, but following the wishes of the father and stepmother, do not tell the child that they are her grandparents. Stepmother of child adopts the child and raises the child never telling her that she was not the natural mother of the child. After sev-

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eral years, the father and stepmother of the child tell grandparents they can no longer see their granddaughter again.

The grandparents never tell the grandchild who they really are, following the wishes of the parent. However, they are unwilling to forfeit all contact with their grandchild. What rights do they have?

Scenario No. 3: Husband and wife are divorced. Following divorce, husband is given custody of the one minor child. Husband has psychological problems which hinder his ability to continue custody of the minor child, and in fact while he legally has custody, said minor child resides with the paternal grandparents who properly raise and nurture the child.

Wife files for a change of custody, following her remarriage, which is granted. Paternal grandparents never contested the change of custody and in fact were in agreement with the wife having legal custody, as they acknowledged the psychological problems which affected their son. Subsequent to wife regaining custody, and for no apparent reason, she completely denies the paternal grandparents any visitation with the minor child.

No allegation is ever made that the paternal grandparents are in any way unfit or would be harmful to the minor child. What are their rights?

Scenario No. 4: Unwed mother gives birth. Maternal grandparents are extensively involved in helping raise the child. Putative father of the child acknowledges paternity and seeks custody of the minor child. Mother of the child does not want custody of the child and does not contest father's petition. Maternal grandparents of the child want to be able to assure visitation with the child once custody is granted to the acknowledged natural and now legal father of the child. What rights do they have?

The last factual scenario: Husband and wife have one minor daughter. Husband dies and wife maintains custody of minor child. Because of emotional and psychological problems which the mother of the child is suffering, she sends the minor child to her mother's home—maternal grandmother—to live with the maternal grandparents for a period of time. The child resides with the maternal grandparents, is raised by them for a period of time and does well.

Subsequently thereafter, the mother of the child decides she wants her minor child back and refuses the maternal grandparents to have any contact with the minor child, including visitation. Maternal grandparents are worried because of the history of emotional problems which the mother of the child has suffered and not only refuse to give up their contacts with their minor grandchild, but worry for his safety as well. What legal rights do they have?

The above five factual scenarios are real. They represent only a small segment of cases which I have litigated over the past few years. Some of these cases are still pending and awaiting evidentiary hearings dealing with what is in the best interests of the minor child. Others have been disposed of through either court rulings or voluntary dismissals following the intervention of psychiatrists, psychologists, social workers, or other professionals trained in the behavioral sciences who have helped reconcile families following disputes, as I have set forth above.

Unfortunately, in most of the cases where professionals in the behavioral sciences have intervened, their intervention was only

agreed to by the legal custodian or parent(s) because of the threat of court litigation. The incentive for legal custodian of a minor child to attempt counseling or a voluntary reconciliation of the emotional traumas involved was their knowledge that the grandparents involved had the ability to seek court enforcement pursuant to legislative enactments.

Without those legislative enactments, without just and proper laws available, there would be no incentive. Thus, the fact that legislation is created will not, of and by itself, create additional burdens on our courts.

I want to make this very clear. I am going to leave from the written testimony, because now I am getting emotionally involved with what I have to say. I think I want to just address it. It has been a long morning. We are into the afternoon. This committee has heard emotional stories from grandparents.

I could have told the committee beforehand that if you give a grandparent an opportunity to tell their story, themselves, without the aid of the attorneys sitting there, it will be a long presentation. They rarely have that opportunity to stand before a court and tell their story. They have come here today in hopes of attempting to do that, and their stories are long, their stories are involved, their stories are the depth of their own heart.

I thank the committee for its indulgence and its patience in listening to these problems. The point I would like to make is the legislation we are asking for, the legislation which I feel is badly needed, will not overburden courts.

I have found in Michigan that the more extensive the legislation we receive, the more we are able to resolve disputes and settle cases. We have the incentive there because without the legislation, the parties are totally in disagreement. They are in total disarray. There are problems. There are injustices. No one knows what they can do. They don't know their rights or responsibilities; but if we have something clear and definitive which sets those forth, parties know they have two alternatives. Either they can fight in court and they can have the expense of legal costs, but, more so, the expense of the emotional costs that are involved, or they can sit down, through the help of behavioral scientists, professionals trained in these areas, and try to resolve their disputes.

True, sometimes the disputes are too far gone and they will not be able to be resolved by professionals who are trained; and sometimes grandparents should not be granted the rights to visitation.

We are not saying to this committee that all grandparents should have rights of grandparent visitation in every case. What we are saying is, that if it is in the best interests of a child, then let visitation occur.

How do we define this best-interest question? In my written testimony I set forth a statute which Michigan uses to define that. I will not repeat it. It is in my testimony, and it is in the record. But I incorporate parts of that statute along with statutes from around the United States, and what my staff did before I came here is we pulled all of the legislation dealing with the best interests of a child as well as all legislation dealing with grandparents' rights throughout the United States, and we reviewed everything that there was, and we tried to take the best of all of that, and I have

prepared a package of proposed legislation which is short, only two pages long, but I have submitted that in my written testimony. It is not the end, but it is a beginning.

One of the things that I attempted to do other than setting forth what I thought was necessary for legislative enactment was to put a safeguard in the legislation, the safeguard being a definition of what is in the best interests of a child.

If a court or a mediation panel knows what they are looking for as the standard—and I have attempted to define that—then it makes it much easier for everybody to know when visitation should occur and when it should be denied. In the proposed legislation, which is found at the end of my testimony, pages 18 and 19, I attempt to set forth my definition of what I feel the court should look to when determining what is in the best interests of a child.

[Mr. Victor's prepared statement follows:]

PREPARED STATEMENT OF RICHARD S. VICTOR, ATTORNEY

TESTIMONY TO THE HUMAN SERVICES SUB-COMMITTEE
OF THE SELECT COMMITTEE ON AGING
GRANDPARENTS' RIGHTS TO VISITATION

1. How And Why This Issue Has Gathered National Attention And The Need For State Statutes.

Whenever portions of our society are members of a class which are susceptible to arbitrary decisions, animosity, and/or loss of rights, members of that class usually find a way to draw attention to their alleged injustices. Hopefully, our society understands and accepts this principle and attempts to cure injustices once they are known.

As a result of continued population growth, especially our "baby boom of the 40's," the 1980's and 1990's will provide our society with a greater number of grandparents than we have known in our recent past. Add to this fact that the divorce rate in our country is staggering with estimates of almost one divorce for every two marriages, and in addition, these divorces are occurring between young parents who have young children, we can see that this trend in our society can create conflicts which were unimaginable in past decades. Some of these conflicts need legislative involvement in order to cure injustices which might occur. Whether the legislative involvement which is necessary should be on a state-to-state basis, strictly Federal, or a combination of both, is a question which needs to be answered at this time.

Grandparents across our nation have been standing up and speaking out when they have been denied the opportunity to visit with their grandchildren for no apparent reasons. This has taken place in the form of the formation of various support groups on a state and national level, as well as numerous court cases which have been pursued to enforce inherent rights of grandparents to be able to visit with their grandchildren. The title of this subject "grandparents' rights to visitation" is only one-half of the subject. The converse deals with the rights of grandchildren to be able to visit with, communicate, and maintain contact with their grandparents. This, I believe, should be the crux of our investigation. This should be of significance to the legislative bodies which pass laws to protect segments of our population who are not able to protect themselves as well as to pass laws which provide remedies where injustices have occurred. To quote Arthur Kornhaver, M.D. and Kenneth L. Woodward: "The grandparent and grandchild relationship is a vital connection."

Through my work as an attorney in private practice in the State of Michigan, I have had numerous dealings with grandparents who have been denied the right to visit with their grandchildren. Because of these denials, these grandparents were forced to seek court intervention to enforce rights which these grandparents felt were their rights inherently. Unfortunately, the rights which they have, if any, are statutory in nature. Therefore, my clients have been limited to what was set forth by state statute in the State of Michigan and

the appellate decisions which interpret those statutes, and have only been able to be successful in receiving court intervension when legislation was provided by the state recognizing this issue.

Through our extensive research we have found various state statutes which deal with this topic and which will be discussed later in this testimony. Several of these state statutes have conflicts within the statutes themselves which has caused a great deal of confusion when they are interpreted by the courts. These conflicts arise in cases where there have been divorces or separations in families, death of a parent leaving surviving parents (grandparents) and minor children (grandchildren), children born to parents who were not married, or where questions of where a child should reside (between a parent and a grandparent) were submitted to a court. In all of these cases, grandparents, whether maternal or paternal, were involved and wanted contact with their grandchildren. In very few cases have we dealt with grandparents fighting for custody of their grandchildren over a natural parent. The cases that we have primarily dealt with are of such a nature that grandparents only wanted to continue a relationship with their grandchildren that had been established and they wished to continue, but had been terminated arbitrarily by the legal custodian (usually the parent or parents) of the child.

Public attention has been drawn to this issue because of the deep emotions and the equities that are involved. I

shall address, by way of factual scenarios, cases which I have handled and which I believe will show a definite need for legislative involvement.

2. The Nature of My Clients, The Themes That Run Through Their Cases, And The Rationale Used To Render Disposition.

The Client Scenarios:

1. Husband and wife, following marital difficulties, have a divorce action filed and pending. Prior to a divorce judgment being entered, husband commits suicide, leaving a three-year old child of the parties. Husband's parents (grandparents) have maintained a close relationship with their three-year old grandson and continue that relationship following the untimely death of their son. While wife is beginning her new life, grandparents have additional involvement with their grandchild, and in fact take care of him while wife begins employment. Wife meets a man and they subsequently marry. Man (stepparent) adopts child. Stepparent is now the legal father of said child. Query: Who are the paternal grandparents of that child?

   Grandparents are told, "You can no longer visit or see grandchild again." What are their rights?

2. Wife, following marital problems with her husband, leaves husband along with their six-month old daughter. While driving, following her departure, she is involved in a fatal automobile accident wherein she is killed. The six-month old child survives. Wife's parents (maternal grandparents) take care of infant grandchild until father of the child remarries. Remarried father and stepmother then have the child live with them. Grandparents continue to see the child, but following the wishes of the father and stepmother, do not tell the child that they are her grandparents. Stepmother of child adopts the child and raises the child never telling her that she was not the natural

mother of the child. After several years, the father and stepmother of the child tell grandparents they can no longer see their granddaughter again.

Grandparents never tell the grandchild who they really are, following the wishes of the parent. However, they are unwilling to forfeit all contact with their grandchild. What rights do they have?

3. Husband and wife are divorced, followingdivorce husband is given custody of the one minor child. Husband has psychological problems which hender his ability to continue custody of the minor child, and in fact while he legally has custody said minor child resides with the paternal grandparents who properly raise and nurture the child. Wife files for a change of custody, following her remarriage, which is granted. Paternal grandparents never contested the change of custody and were in agreement with the wife having legal custody, as they acknowledged the psychological problems which affected their son. Subsequent to wife regaining custody, and for no apparent reason, she completely denies the paternal grandparents any visitation with the minor child. No allegation is ever made that the paternal grandparents are in any way unfit, or would be harmful to the minor child. What are their rights?

4. Unwed mother gives birth. Maternal grandparents are extensively involved in helping raise the child. Putative father of the child acknowledges paternity and seeks custody of the minor child. Mother of the child does not want custody of the child and does not contest father's petition. Maternal grandparents of the child want to be able to assure visitation with the child once custody is granted to the acknowledged natural and now legal father of the child. What rights do they have?

5. Husband and wife have one minor daughter. Husband dies and wife maintains custody of minor child. Because of emotional and psychological problems which the mother of the child is suffering, she sends the minor child to her mother's home (maternal

grandmother) to live with the maternal grandparents for a period of time. The child resides with the maternal grandparents, is raised by them for a period of time and does well. Subsequently thereafter, the mother of the child decides she wants her minor child back and refuses the maternal grandparents to have any contact with the minor child, including visitation. Maternal grandparents are worried because of the history of emotional problems which the mother of the child has suffered and not only refuse to give up their contacts with their minor grandchild, but worry for his safety as well. What legal rights do they have?

The above five factual scenarios are real. They represent only a small segment of cases which I have litigated over the past few years. Some of these cases are still pending and awaiting evidentiary hearings dealing with what is in the best interests of the minor child. Others have been disposed of through either court rulings or voluntary dismissals following the intervention of psychiatrists, psychologists, social workers, or other professionals trained in the behavioral sciences who have helped reconcile families following disputes as I have set forth above. Unfortunately, in most of the cases where professionals in the behavioral sciences have intervened, their intervention was only agreed to by the legal custodian or parent (s) because of the threat of court litigation. The incentive for legal custodian of the minor children to attempt counseling or a voluntary reconciliation of the emotional traumas involved was their knowledge that the grandparents involved had the ability to seek court enforcement pursuant to legislative enactments. Without those legislative enactments, without just and proper laws available, there would be no incentive. Thus the fact that

legislation is created will not of and by itself create additional burdens on our courts. In fact, they conversely create incentives for parties to reconcile and to correct wrongs or injustices which may have been committed. The court enforcement and application of legislation (both state and Federal) would be utilized as a last resort to correct injustices.

In reviewing the five factual scenarios I have presented, the following themes can be found:

1. Where there is a death of a parent who leaves a minor child and grandparents of the minor child surviving;

2. Following a divorce and custody dispute wherein custody of the minor child or children are placed with the former daughter or son-in-law of the grandparents of the child;

3. Grandparents of a minor child born out of wedlock;

4. A parent of an adult child who has a child have conflicts between themselves causing disputes which ultimately affect a grandchild and the grandparents' contact with that grandchild.

In all of the above, and in the actual cases which these themes reflect, my legal duty was to represent the grandparents and fight for their rights to be able to visit with their grandchildren. In no case do I believe that grandparental visitation is an absolute. Not all grandparents should be able to visit with their grandchildren. There may be many instances where in fact it would be detrimental to a child to be subjected to visitation with his or her grandparents given the proper factual setting. However, these decisions must be made on a case by case basis with one underlying theme or factor; and

that is, THAT THE BEST INTERESTS OF THE CHILD SHALL CONTROL.

3. "Best Interests" -- What Does It Mean?

Michigan, at MCLA 722.23 defines best interests of the child as follows:

722.23 Best interests of the child, definition

Sec. 3. 'Best interests of the child' means the sum total of the following factors to be considered, evaluated, and determined by the court:

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and continuation of the educating and raising of the child in its religion or creed, if any.

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school and community record of the child.

(i) The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.

(k) Any other factor considered by the court to be relevant to a particular child custody dispute.

This state statute, which was effective April 1, 1971, and amended January 14, 1981, sets forth what the trial court should look to in defining the concept of "best interests" of a child. These eleven factors as set forth above, are to be utilized in both disputes regarding custody of minor children (in pending divorce actions or subsequent requests for modification) as well as when there are disputes regarding visitation. Unfortunately, a careful analysis of the Michigan statute may very well be applicable and quite definitive when dealing with a custody dispute, but somehow falls short when considering the question of visitation. An example would be sub-sections (c), (d), (e), (h), and (j) of the statute. These sub-sections would have very little, if anything, to do with requests for visitation. But, it is all we have in Michigan, when dealing with this issue. In review of other states, factors in considering the definition of "best interests" adds the following factors for a court to utilize:

1. The interaction and inter-relationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest. (Arizona §25.332);

2. Notice of a custody proceeding shall be given to the child's parents, guardian or other custodian. The court, upon a showing of good cause, may permit intervention by any interested party. (District of Columbia Statute);

3. The court shall not consider conduct of a proposed custodian that does not affect his relationship with the child. (Colorado

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§14-10-124);

4. In considering a proposed custodian, the court shall not presume that any person is better able to serve the best interests of the child because of that person's sex. (Colorado);

5. The physical violence of threat of physical violence by the child's potential custodian, whether directed against the child or against another person, but witnessed by the child. (Illinois §602);

6. Where the child has reached the age of fourteen, such child shall have the right to select the parent with whom such child desires to live unless that parent selected is determined not to be a fit and proper person to have custody of the child. (Georgia §30-127).

As one can see from above, the states' attempts to define best interests somehow seem more logical when put in the setting of legal proceedings involving disputes as to custody of minor children. Questions of visitation have usually been left to the discretion of trial court judges to determine what visitation should be granted and to whom. Most cases have dealt with questions of visitation concerning non-custodial parents of minor children. We do not have concrete legislation that specifically sets forth criteria to be utilized in making determinations regarding visitation of minor children with their grandparents.

4. <u>The Problem With State Laws As They Currently Stand (Michigan As A Prime Example)</u>.

The history of grandparents' rights to visitation in Michigan, can be traced as recently as a little over one decade ago. In 1971 a state law was passed which provided that:

> if either the father or mother of an unmarried child is deceased, a parent of the deceased person may commence an action, by complaint or complaint and motion for an order to show cause, in the Circuit Court of the county in which the child resides for visitation of the child during its minority. If the court finds that such visitation would be in the best interests of the child, it may provide for visitation of the child by general or specific terms and conditions. (MCLA 722.27(a))

This state statute limited the rights of grandparents to seek visitation to situations where there had been a death of their own child leaving a minor grandchild. It would have created a remedy to our client scenario numbers 1 and 2 (as set forth above), except for the fact that a stepparent adoption occurred in those factual situations. This was the problem that Michigan faced when a 1979 Court of Appeals decision (Bikos v Nobliski, 88 Mich App 157 (1979) was asked to interpret conflicting statutes dealing with this grandparent visitation statute and the Michigan Adoption Statute which provided in part as follows:

> After entry of the order of adoption, there shall not be any distinction between the rights and duties of natural progeny and adopted persons, and the adopted person shall become an heir at law of the adopting parent or parents, and an heir-at-law of the lineal and collateral kindred of the adopting parent or parents. After entry of the order of adoption, the adopted person shall no longer be an heir-at-law of his or her natural parents, except that a right, title, or interest vesting before entry of the final order of adoption shall not be divested by that order. (MCLA 710.60)

The Michigan Court of Appeals in the Bikos, supra, case held that the Order of Adoption Statute took precedence over the Grandparent Visitation Statute which effectively made the

natural grandparents of a minor child who was adopted by a stepparent following the death of the natural parent, no longer the legal grandparent of that child. Obviously, this conflict created harsh results and in my opinion a tremendously unjust dilemma for grandparents throughout the State of Michigan. In 1980, following the efforts of many groups and individuals, the Michigan Adoption Statute was amended to read:

> ...after entry of the order of adoption, the adopted person shall no longer be an heir-at-law of a parent whose rights have been terminated or the lineal or collateral kindred of that parent.... (MCLA 710.60 as amended)

The effect of that amendment, was that the adopted child would no longer be an heir to its natural family line once the child's parents' parental rights had been terminated. But, if there had been no termination of parental rights, the child's natural blood line would not be destroyed. This would then not take away from natural grandparents their standing as legal grandparents of a minor child who was adopted unless said adoption followed termination of parental rights.

In addition, in 1980, the Michigan Child Custody Statute (MCLA 722.27) was amended to provide:

> Upon petition consider the reasonable visitation of maternal or paternal grandparents and, if denied, shall make a record of such denial.

On its face, one would think this amendment to the Michigan Child Custody Statute would solve the problems that grandparents would have when being denied visitation with their grandchildren. However, albeit the intent of the legislature was good, they placed this amended statute under a section of the Michigan laws which had a preamble. The preamble, or

prerequisite to utilization of this amended statute, provided as follows:

> If a child custody dispute has been submitted to a circuit court as an original action under this act or has arisen incidently from another action in a circuit court or a judgment of a circuit court, for the best interests of the child the court may: ...

Therefore, in order for a grandparent to attempt to utilize the statute which allows them to petition for consideration regarding visitation, there must either have been, or presently have, a child custody dispute involved. In the cases I have litigated, very rarely does a grandparent seek custody of their grandchild. They merely want visitation and, therefore, cannot avail themselves to the remedy which Michigan has provided. In addition, when the legislature enacted the amendment to the Child Custody Statute which provided for this ability to petition for reasonable visitation (following a child custody dispute), the Michigan legislature repealed the prior law known as the Grandparent Visitation Statute, which was originally enacted in 1971, as cited above (MCLA 722.27(a)). Obviously, we have a great deal of confusion in our courts as to what is the present status of our laws and how should those laws be interpreted. There are presently pending several new statutes which hopefully will either cure the problem, or add to the conflict, but to date none have passed both Houses of our legislature.

A brief research into how other states handle this dilemma finds that over twenty states have passed legislation dealing with this problem. Within these twenty states there are

tremendous conflicts, especially once a stepparent adoption occurs. Other conflicts arise in the interpretation of these statutes and whether or not they are to be construed to intend that grandparents have standing to intervene in divorce proceedings to assert their rights to visitation while their own children's divorce matter is pending. Oklahoma (Oklahoma Statute Annotated Title 10, §60.16) has a unique enactment which appears to set forth that grandparents have visitation rights with their grandchildren unless they are terminated by court order, and such is true even though the child may be adopted by his stepparent. Because of the frequency of stepparent adoptions and what affect the stepparent adoptions have on the grandparents of the child, specifically with respect to visitation rights, we need some cohesive legislation on a Federal level to help our states draw together into a unified position with respect to this problem.

5. The Need For Uniform Grandparental Visitation Rights Act

Other than the need for a clear and concise understanding of this problem from a national perspective, and Federal legislation appropriate thereto, there is another reason why there is a need for Federal legislation dealing with this problem. In several cases wherein I represented grandparents who were forced to seek court enforcement of their visitation rights, we have been threatened by the parent or legal custodian of the minor grandchild involved, that if we were to pursue our court action they, the parent or legal custodian, would remove the child from the State of Michigan. Considering the fact that the City of Toledo, Ohio is approximately the same distance from Detroit,

as the capitol of our state, Lansing, Michigan, this threat of removing children from the state is very real. What remedy would a grandparent have when faced with this threat? If we had Federal legislation, along with state legislation, dealing with this problem, such as we have with our civil rights legislation, the threat of moving from one state to another to avoid enforcement of court orders would be a mere "puff of wind."

Our society today is a "transient society." We are little more than three hours away by air from one coast to another. People move from one state to another as easily now as we use to move from one city to another. This is progress, but how does it affect our families and our family structure? Fortunately, we do not have to concern ourselves with the family which is whole, or which is not in dispute. But what of the families who have emotional traumas placed upon them for one reason or another? Should they be afforded protection in situations where unjust actions motivated by animosity, vendictiveness, and hostility, tear apart blood relationships. The problem of grandparents' rights to visitation is no longer a local issue. We need state statutes to protect people within the boundaries of our states. However, when the people involved live in different states or move from one state to another, then we need Federal legislation available for the same reason that we need state legislation when the parties are confined to one single state. Again, court enforcement of this legislation is a last resort! It is the motivating incentive for parties to reconcile their differences. It is the motivating incentive for parties to voluntarily seek counseling in hopes

of reconciling their family traumas. But it does provide a last resort for injustices which may occur.

I have had an opportunity to review the Uniform Grandparental Visitation Rights Act drafted by Roger E. Stevens. I believe it is a good skeleton, but it needs some work. Subsection 1 sets forth that:

> Notwithstanding the award of any child by adoption ... all children shall be entitled to have reasonable grandparental visitation ....

I believe the word adoption needs further clarification as to whether or not this statute should affect the family unit where an adoption at birth following termination of parental rights on a voluntary basis is made. I am not certain that disrupting that new family unit (distinquishing this from a stepparent adoption once a family unit has been in existence) would be in the best interests of the newly adopted child. This is something for further discovery and I would defer to professionals in the behavioral sciences for their imput. I would also think that further clarification by way of definition should be set forth, so that a trial court would have a better understanding of exactly what definition "endanger the child's physical health or significantly impair his emotional development" means. This is quite significant as it would be the crux of the court proceeding and the burden for the litigant to prove and/or overcome. This must not be ambiguous. It must be clear, concise, and highly definitive, so that all parties involved know what standards are to be met if grandparent visitation is to be denied.

In Sub-section 2 of the Uniform Grandparental Visitation Rights Act which was submitted to me, I would suggest that a definition of "best interests of the child" be attempted, so that the trier of fact in these cases would know what standard is to be followed when implementing sub-section 2 of the Act. Further, the Act should set forth the procedural factors which are to be followed when asking a court to implement this legislation and enforce same (i.e. done by way of petition or petition and order to show cause or complaint, etc.).

6. Specific Recommendations

The most obvious recommendation that I can make, but one which is not part of these hearing is that each state adopt some form of legislation recognizing the problem of grandparents' rights to visitation and providing some remedy which would be available to enforce these rights. I would also suggest that state legislation set forth a scheme of mandatory counseling through the use of professionals in the behavioral sciences to help provide direction for families who are in dispute and are suffering from the emotional traumas which are usually present when an issue of denial of grandparental visitation is involved. The court should be able to consider the willingness to cooperate in attempting to reconcile these problems and not allow one party to control the proceedings by blatant avoidance of attempts to reconcile the dispute.

Further, the court should be able to inquire into reasons for any alleged animosity (or why denial of visitation was made in the first place) and then consider only reasons where

proper justification is presented. Obviously, if proper justification is presented, then this is to be considered when determining what is in the best interests of the child with respect to this visitation question. With respect to Federal remedies, I would recommend that legislation along the following lines be submitted for further discussion and inquiry with respect to this problem.

Proposed Legislation:

GRANDPARENTS' RIGHTS TO VISITATION

(a) If either the father or mother of an unmarried minor child is deceased, the parents or grandparents of such deceased person may be granted reasonable visitation rights to the minor child during its minority by a court of competent jurisdiction upon a finding that such visitation rights would be in the best interests of the minor child.

(b) When determining whether such visitation would be in the best interests of the minor child, the court should look to the following factors:

1. The love, affection, and other emotional ties existing between the parties involved and the child.

2. The capacity and disposition of the parties involved in give the child love, affection, and guidance and continuation of the educating and raising of the child in its religion or creed, if any.

3. The moral fitness of the parties involved.

4. The mental and physical health of the parties involved.

5. The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference.

6. The amount of personal contact be-

tween such persons and the minor child prior to the application for the order granting visitation rights.

7. Any other factor considered by the court to be relevant equitable, and to be in good conscience in deciding the amount and extent of such requested visitation.

(c) Any grandparent shall have the right to intervene in an action involving the guardianship of any minor child for the purpose of obtaining visitation rights to said minor child.

(d) Whenever any court shall have had before it any questions concerning the custody of any minor child, or whenever the parents of the minor child have been divorced, or are engaged in legal proceedings to obtain a divorce, or legal separation, the maternal or paternal grandparents of said minor child shall have the right to file a complaint or complaint and order to show cause requesting visitation with said minor child if said visitation would be in the best interests of said minor child.

(e) The court may make or modify an order granting or denying grandparental visitation rights whenever such order or modification would serve the best interests of the minor child; but the court shall not restrict a grandparent's visitation right unless it finds that the grandparental visitation would not be in the best interests of said child by clear and convincing evidence.

(f) This section shall apply where a minor child has been adopted by a stepparent, grandparent, or other relative of said minor child; said adoption shall not terminate the rights of the child's maternal or paternal grandparents as herein set forth.

(g) If a dispute with respect to grandparental visitation arises, then, the parties thereto shall be entitled to an evidentiary hearing wherein the court shall determine by clear and convincing evidence why said requested grandparental visitation shall not be granted. If a denial of said grandparental visitation is made, then the court shall make a record of such denial. The court shall at all times consider the best interests of the minor child when making this determination.

The above reflects a mere guideline which can be utilized in the drafting of grandparental rights to visitation laws. There is no question in my mind that the problems relating to the rights of grandparents to visit with their grandchildren is a real concern to a great number of people in our country. This concern is one which shall surely grow because of the amount of divorce in our country. We must concern ourselves with the concept of the "extended family" which includes grandparents, stepparents, and other third parties from the traditional family unit. Further, grandparents "as seniors" of our society shall have a greater impact as their numbers increase. The concept of "grandma" and "grandpa" sitting in a corner unable to stand up for themselves and speak, no longer exists. "Grandma" and "grandpa," just as grandson and granddaughter, have inherent rights in our family unit. They are necessary to pass on the heritage of the past. They are a link in the long chain of continued growth and expansion of our society. They should no longer be ignored!

Psychiatrists, psychologists, and social workers can tell us of the importance that grandparents can have on grandchildren. As a former history major, it is interesting to note how different civilizations treat their older generations. It would seem logical that "seniors" can help us learn from our mistakes and teach us traditions and cultures which can be utilized and passed on in the future. Lastly, and it is something that I remind the litigants who are involved in cases where I fight in court for grandparent visitation, and that the parents who are standing in the

way of allowing their children to contact, communicate, and share with their grandparents, will one day be grandparents themselves. How do they want their child to remember their own actions. We teach our child en not by what we say, but by what we do. It is now time to do what must be done and to recognize the rights and responsibilities that we all face in the most basic structure that God ever created -- the family. This is not a concern isolated to the local community, or even to a state as a whole. This is a concern, and a responsibility, of all citizens in our nation. I urge you to strongly consider adopting legislation, on a Federal level, in support of the rights of grandparents, and the rights of grandchildren in this regard. Thank you for your consideration.

RESPECTFULLY SUBMITTED,

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Mr. BIAGGI. Let me ask a question. Is it your contention that if we have good legislation on the books that it will serve as a deterrent as far as going to courts are concerned?

Mr. VICTOR. Most definitely. I think that the fact that you have clear and concise legislation in any area of law where reasonable people will not deter as to the definition, they will understand it, especially when you are dealing with this area of the law, my experience, and it is extensive in this area in the State of Michigan, is that 90 percent of my cases will be resolved.

To give this committee an indication of the five scenarios that I presented, all five of them went and a court action was started by way of a complaint. Four of the five never made one court hearing. They were resolved without even a court hearing. Once two reasonable attorneys are involved who sit and counsel their parties and tell them this is what the law says, four out of five said "OK, well, I do not like her or I never got along with my mother-in-law, but if this is what the law says and this is what it costs to fight it and the law is pretty clear, what are we going to do?"

The attorneys may refer the parties to psychological specialists or social workers, somebody who is objective, and they resolve the disputes. The most difficult one we had was the one where the grandparents never told the grandchild that they were the actual grandparents. In that case we utilized a psychiatrist who first spoke with the parents. The problem was that the stepmother had convinced herself that she was the mother of the child. This was a very difficult case. It took a lot of time. It did not need court action. What it did need is reasonable people who understand that there are legal rights and then follow them through.

The psychiatrist spoke with the parents and then he spoke with the grandparents to understand what the other parties were going through. Then he spoke with the child, and in the psychiatrist's office the child was told the truth, and then—and on the other hand when my children were born, that was the proudest moment of my personal life. There was a reuniting of that family and every Christmas I get packages of fruits and flowers from the grandparents thanking me for bringing them back together with their grandchild, and they are together today.

I received a telephone call from them a month ago saying that the parents of the child have moved out of the State of Michigan, but we will not need to go into court, because once the family was reunited—my clients live in Dearborn, Mich., also have a home in Florida—the parents of the child have allowed the grandchild possibly to go to Florida to visit the grandparents. We never had a trial, we never had a court hearing. What we had was law. On the other hand, the need——

Mr. BIAGGI. Excuse me. Michigan has a law, but in the end there was a form of mediation was there not?

Mr. VICTOR. The mediation was not in the formal presentation as attorneys used mediation. What we had is we had two attorneys and a psychiatrist who was agreed on by the two attorneys.

Mr. BIAGGI. The law compelled them to take an alternate course?

Mr. VICTOR. They were given two alternatives, an alternative of going to court or an alternative of going to the psychiatrist's office. I gave the alternatives.

Mr. BIAGGI. We have legislation in 42 States. You are testifying about Michigan?

Mr. VICTOR. I am familiar with legislation in most of the States. I am very familiar in the application of the Michigan laws, which by the way, for purposes of this committee, may be changed as of this morning. There are two new bills on Governor Milliken's desk. They will be signed. There is no opposition to them. These new laws will broaden grandparents' rights to visitation further.

Mr. BIAGGI. Which if any of these States have model legislation?

Mr. VICTOR. I guess Hawaii, which we indicated today provided legislation for any interested person that could be brought in would now give us model legislation for the concept of the extended family, which I think is going to be a concept of the future because of the facts that there are many divorces, there are young people getting divorced and then remarriages, and because of the remarriages we will have a concept in the 1980's, 1990's and the year 2000 of stepparents and stepbrothers and sisters which will be a psychological family to a child. This extended family concept is something that I think we have to accept and it will be the reality of the future.

Mr. BIAGGI. What seems to be evolving here is on a statewide level we have to have some process take place with the Commission on Uniform Laws. My experience with State legislatures is that you have some legislation that is enacted that is very comprehensive, and other legislation that is token legislation. So it would seem to me that what the testimony compels us to think is that you need good law, one that will deal with the floodgate situation that Mr. Kudler spoke about in the U.S. attorney's office. You will not have the floodgate situation because people now understand that they must sit down and find and pursue a reasonable course.

How about the enforcement part of it from a State to State?

Mr. VICTOR. What we have now?

Mr. BIAGGI. When people flee.

Mr. VICTOR. This is one of the problems I have addressed in the testimony. The testimony is in the record. I prefer to go one on one with you. Now you have the enforcement through the contempt process, and when people flee as we have heard testimony today, there is definitely a problem. There is also a problem in threats of when you have a family situation where they refuse to reconcile or refuse to try to resolve the disputes. I have had threats made that if you file your petition, Mr. Victor, my client has advised me that he is leaving the State with his family. That is a real threat and a deterrent to the grandparents carrying it further.

If we had Federal legislation which is enacted throughout the United States and accepted as such, enforceable as such, that would be a mere puff of wind. It would be a recognized right nationally and federally. Our society today is a transient society. We are a little more than 3 hours away from one coast to another. People move from one State to another as easily now as we used to move from city to city. This is progress, but how does it affect our families and our family structure?

Fortunately, we do not have to concern ourselves with the family which is whole or which is not in dispute. But what of the families who have emotional traumas placed upon them for one reason or

another? Should they be afforded protection in situations where unjust actions motivated by animosity, vindictiveness, and hostility tear apart blood relationships?

The problem of grandparents' rights to visitation is no longer a local issue. We need State statutes to protect people within the boundaries of our States. However, when the people involved live in different States or move from one State to another, then we need Federal legislation available for the same reason that we need State legislation, when the parties are confined to one single State.

Again, the court enforcement of this legislation is the last resort. It is the motivating incentive for parties to reconcile their differences. It is the motivating incentive for parties to volunteer to seek counseling in hopes of reconciling their family traumas. But it does provide a last resort for injustices which may occur.

I have had an opportunity to review the Uniform Grandparental Visitation Rights Act drafted by Roger Stephens which was submitted to me when I was invited to these hearings. My written testimony discusses it in depth, and I tried to analyze parts of it. It is a mere skeleton. It is not definitive enough. I do not think it is clear. It is a good theory, it is a statement of theory, it is not a good statement of legislation.

I have some specific recommendations. The most obvious one that I can make is that each State adopt some form of legislation recognizing the problem of grandparents' rights to visitation and providing some remedy which would be available to enforce these rights. I would also suggest that State legislatures set forth a scheme of mandatory counseling through use of professionals in the behavioral sciences to help provide direction for families that are in dispute and are suffering from the emotional traumas that are usually present when an issue of grandparental visitation is involved. This can be in the form of mandatory mediation, and I believe this is what the chairman was talking about and other people here.

In Michigan, starting in July of 1983, we have new laws coming into effect dealing with divorce, and these laws provide for mandatory mediation. The State bar questions whether or not it will be successful and useful, and I would present one argument against mediation that has been presented there for this committee to consider, and that is if mediation is utilized other than binding mediation, and I do not believe that anyone has discussed binding mediation or arbitration, the problem with mediation is that if one party feels they have lost, there is no actual enforcement, because a court, a judge, someone with the legal authority that the laws dictate and provide for is not making the decision.

So what happens is whoever loses in a mediation situation has a right to an immediate appeal before the court. So unless the parties are able to resolve their differences, and if so they would not have been in court, they would have been able to resolve it between the two attorneys before they filed the petition, as soon as one party loses the mediation level, they will file for a court hearing. I want a judge to hear my case. So the attorneys are going to have to try each case at least two times or we would have resolved the problem before we got into the mediation. So this is the problem with a mediation concept other than a binding mediation. I do

not know what the solution is. I can tell you that that problem has happened in counties where I have practiced where they have the mediation such as Wayne County.

Mr. BIAGGI. How frequently?

Mr. VICTOR. Any time that the resolution that the mediators give is perceived by one of the parties as a loss. That means if one client says I really hate the other party and I am going to fight this to the death, their contention is I either win everything or I appeal. If there are reasonable people with reasonable attorneys who have had some kind of help and guidance, you realize that no one wins everything. There has got to be compromise, otherwise nothing would be done.

Mr. BIAGGI. I am aware of that. On the other side of that, it would seem people are resigned to compromising in some fashion—I am trying to figure how effective that process is, even though you may have some cases where you have losses and people are furious and then——

Mr. VICTOR. You are asking about the mediation concept, how successful that would be?

Mr. BIAGGI. Yes.

Mr. VICTOR. I can be very honest with you. It is very limited, because the law is going to be enacted in July. It was done on a limited basis in one county, Wayne County, dealing with friend-of-the-court matters, child custody, and things of this nature. I have had extensive experience there. I would say a third of them were not resolved and had to be appealed to a higher court or to the judge, and I would say a majority of the ones that were not appealed were not appealed because of the legal costs that would be involved.

Mr. BIAGGI. So you are really saying two-thirds of them were resolved? That is substantial.

Mr. VICTOR. That is substantial. The problem is, those were not cases where you had heavy disputes. Those were cases of how much child support should you pay or what day of visitation should you have or how much. Starting in July 1983 the new law will involve mediation for everything dealing with child custody cases—in other words, we are trying to take divorce out of the trial court's docket. Then, after July I will be able to give you a better indication of how it works.

The State had to find an alternative to take divorce out of the courts. Think of it, 50 percent of marriages end in divorce. If that were a disease, it would be an epidemic. These are all going to court. Who is paying for the judges to hear the cases? You are going to have to wait 3 years for a divorce trial? That is ridiculous. So they had to find an alternative. The mediation is the alternative they are attempting. As of next year we will know whether or not it works.

I think it is something that the committee will look toward and find if there are other States who already have mediation for these kinds of disputes and to see what the percentages are of appeals. In Michigan we have very few appeals from our trial court where we have traditionally had these disputes resolved to the court of appeals, and that is because the State law says the court of appeals will not reverse a trial court's ruling unless they find an abuse of discretion. For those lawyers on the panel, that means that the

court of appeals is going to have to slap some judge's hands if they are going to overturn him. Otherwise they say that the trial court is going to be your court of last resort, but legally we give you a right to take it up.

Mr. BIAGGI. Does that not bring us back to where we are? We heard some witnesses testify this morning that they are not satisfied or they would be wary, put it that way—they would be wary about having the problem resolved by a judge.

Mr. VICTOR. The problem is that it is unfortunate, the five stories that I heard, and I have heard many of them, and they are all unfortunate for real and true facts. However, I could have brought, if they had wanted to come, an equal amount of people who have had an opportunity to be in court, and I do not like the term victorious or won, because nobody wins, nobody loses, but have been reunited and they would say the system works.

Mr. BIAGGI. I do not know about the amount of traffic in various courts across our land. I imagine some of them are less belabored than others, but I know in the New York State courts it is just one huge traffic jam. The Kudlers testified that they were—their matter was bruited about from one judge to another, and in the midst of all that, the judge is dealing with other matters as well, so my thinking is that this kind of situation is delicate and difficult to begin with, and there should be some kind of atmosphere, a stable, tranquil atmosphere which assures the parties that there would be a genuine, deliberate consideration given to the whole matter.

Mr. VICTOR. I go back and agree with everything you have said, Mr. Chairman. I think about the years in the 1960's when I was involved in high school and college activities and the civil rights acts were talked about and pending. I remember reading and being involved in debates on both sides of the question of whether or not there should be civil rights legislation, should you force people in their businesses or homes to do things that maybe they choose not to for whatever reason. Should you put laws and make it mandatory or on a voluntary basis?

We have the same problem. I remember being 17 years old and talking as a high school senior to one of the newspapers saying that once laws are passed and put on the books, people's hearts will sometimes be changed and biases will sometimes be overcome. Sometimes we need somebody above us saying this is what is right, and then sooner or later people follow through with that.

I suggest that Federal legislation, a statement nationally, recognizing the rights of grandparents and grandchildren, is necessary. May I also say something else that is not known, and I did not want to be known in the State of Michigan, because I felt that it would hurt my objectivity and my being the advocate for my clients in court.

My involvement in this area is not only as a litigant, as an adversary for the litigants that are involved in these disputes, but I have something similar to the people coming before you. I am not a grandparent, not yet. I have a ways to go. My wife is here in her 9 month. But I was a grandchild and I am a grandchild. For 20 years I was denied the opportunity to visit with my grandparents. It is too late for me to have memories of being a grandchild and having the opportunity that other grandchildren had.

I attempted to resolve disputes within my own family. My father died very suddenly a year and a half ago. I was never able to resolve the disputes within my own family, and unfortunately they continue in my mind. I never as a child grew up knowing that I missed anything, because if you do not know what you are missing, you do not miss anything. When I married my wife Denise 4½ years ago, 4 years ago, I came into her family and I saw for the very first time a table for dinner with four generations sitting around it, and I had never, ever perceived that before. I sat in a living room and discussed things with a grandparent, with a grandmother, and I realized then as an adult that I had missed something.

What you do not have before you here, gentlemen and ladies, are grandchildren. It is obviously a bit exploitive to bring children in and have them speak, because as a child I did not know what to say and I really did not know my feelings. As an adult, though, you are better able to articulate feelings that you may have expressed that you lost. I did lose those feelings, and I am here now not as an attorney advocating a client's position but as a grandchild asking for help and asking for guidance. If there is legislation, and I feel that this is a land of laws, and I believe in that. Maybe I am naive, but I will always believe in that. This is a land of laws. We govern ourselves by our laws. We will be remembered by the laws that we put on our books. I believe it is necessary and I believe it is time to recognize this problem and attempt to resolve it. We, you, all of us, will not be able to resolve the difficulties for everyone, but if we make a record that there are legal rights of grandparents and grandchildren, rights which should not be taken away because of a death, a divorce, a separation or family trauma, and that these rights exist, I think we make a statement, and I think it will be followed in the years to come.

A simple look at the population scale will show that within the next 10 to 15 years, in 20 years and beyond that, grandparents will no longer be a small minority in the corner.

The baby boom of the 1940's will bring us grandparents of the 1980's and 1990's. I took a look at the 1980 census before I came here today and if you look at the amount of people and numbers that are of grandparental age now, we are talking about 36 percent of our population, over 87,000 people.

This is going to increase because in another 10 to 20 years, you are going to have the influx of a greater number of people who were from my generation who will be grandparents.

These are the voters, these are the supporters of our country. And these are people in need.

I think it is time we make a statement.

Mr. BIAGGI. The question is and has puzzled us and apparently Professor Areen has questions about it as well, can the Federal Government be involved in this issue and justify its involvement on constitutional grounds? Either or both of you.

Professor AREEN. I am glad you raised the issue, Mr. Chairman. It is one of the issues I wanted to discuss today because I am concerned that we not overpromise.

More legislation is needed. Better legislation is needed. I could not agree with you more that better legislation will keep people out of court and I consider that always a good thing to do.

I do not see anything in the Constitution that gives this body, as powerful as it is, the authority to set standards for custody.

I can think of four very important things this committee can do, however. The first you are doing now. There is an important role in terms of publicizing this problem and providing some national leadership in terms of recognition of the need for better State laws.

Second, you are in a position to work with both the States and some of the important private groups, such as the National Conference of Commissioners on Uniform State Laws.

Third, it seems to me it is an appropriate role to Congress to set up a national clearinghouse that might share information between the States as to legal advances at the individual level. There is, as you probably know, located in the Department of Health and Human Services, a National Parent Locator Service that works to locate missing children, or to track down missing parents for child support.

It seems to me it would not be difficult to extend the authority of that existing entity to reach a situation in which children are taken out of State.

Fourth, as my colleague Mr. Victor, has mentioned, and I agree with him, when you do have an interstate dispute, then there is clearly a Federal role. I would suggest it may be in order to consider a specific amendment to the Parental Kidnapping Prevention Act which was alluded to earlier, 28 USCA 1738A.

It is an act intended to assure that we do not have conflicting court decisions and to encourage and indeed enforce recognition by one State of a decree in another—again, a change that would take care of at least one of the problems we heard this morning.

Mr. BIAGGI. Mr. Craig.

Mr. CRAIG. Thank you, Mr. Chairman.

Professor Areen, you have touched on something that I was sitting here rolling through my mind as Mr. Victor spoke, the real question of can the Federal Government, can this Congress become involved in promulgation and writing of laws that will solve this problem or at least lend some strength toward solutions that you have discussed?

I think a lot of people think if we can only get a Federal law, all of this problem is going to go away, when I think you made the point very clearly that although law in itself can establish parameters and directives, it is really at that court level and at the mediation or the level of counseling where the real solutions come about.

I guess my concern, and it is all dealing with the plight of the child, we are awfully concerned about the grandparents at the moment now and that is justifiable and I have witnessed those kinds of traumas with grandparents.

I have to also say that we have to consider the child here and well we should. The kind of excessive psychological turmoil that a child can go through, sometimes it is too high a level.

Professor, how would you measure that turmoil; and how should a judge evaluate it, recognizing the laws that are on the books—

and frankly, I come down on the side that this is a State priority and prerogative and not a Federal prerogative.

Professor AREEN. I think Dr. Derdeyne, who preceded us, underscored at the level of psychoanalytic concerns the damage that kind of conflict can do to a child. I wish I had a simple measuring rod for determining when there is too much conflict for a particular child.

There certainly is not one that we can establish at a national level nor really even at a State level.

It is a determination that has to be made for a particular child.

So while we can set better national standards and better State standards to encourage solution of the straightforward problems, in the end, we have got to have solutions that are humane enough to deal with a particular child.

There is no alternative in my view.

Mr. CRAIG. Mr. Victor, you mentioned, in giving the examples you gave in your testimony—and I thought they were excellent—that you were able to bring about some solutions to these difficult programs.

At this time, based on the laws of the State of Michigan and a couple more that you say may become law today or tomorrow or very soon, are you saying that the laws that are currently on the books of the State of Michigan are inadequate to handle the problems you are asked to deal with?

Mr. VICTOR. That is an excellent question, Congressman Craig. My testimony, the written testimony, has a section dealing with inconsistencies within Michigan itself.

I brought this to the attention of the legislature in the last 2 years in drafting of that legislation, which we feel was strengthening and hopefully brought about the change that Michigan has now submitted to its Governor to pass.

The new legislation that Michigan has is not perfect as far as the grandparents that I have represented feel, however, it does cure the defect in all situations except when a parent does not want his or her own parents to see the grandchild.

Those situations the legislature felt it should not deal with. All other situations, when there was a death, a divorce, a situation where there was an unwed parent or parents are not married and there are children born, dealing with the scenarios I have submitted to you, all of those scenarios will now be covered under Michigan's laws.

Michigan's laws are still inadequate when dealing with the definition of best interests, dealing with visitation questions, they are very good dealing with child custody questions, but there are no laws dealing with what the court is to look to toward visitation.

Mr. CRAIG. Are you saying, then, in this case, that the laws ought to override the right of the parent?

Mr. VICTOR. I believe——

Mr. CRAIG. In custody of that child?

Mr. VICTOR. You are asking a question of parental rights versus parental responsibility. You are dealing with a parent's right to be sovereign within his or her own home and to make the final decisions; is this correct?

Mr. CRAIG. Yes.

Mr. VICTOR. I am indicating that that is an extremely important right and I am not a purporter of infringing on that right.

However, with that right, as with all other rights, there come responsibilities and if the rights and the responsibilities are playing off of one another and the responsibility does not stand up to the right that is given, there should be some intervention when there is a deprivation and an injustice.

In these situations, parents have parental rights, but when they fail to properly maintain those rights and live up to their responsibilities, and when there is an injustice, then I think there should be some type of program to come to court for help.

Mr. CRAIG. You are saying that it is then the responsibility of the Federal Government to decide that right, or in the case of the way you phrased it, that particular responsibility coinciding with the right of the parent?

Mr. VICTOR. I feel that the Federal Government has a responsibility to the citizens of our Nation to allow citizens of our Nation to come to it for help when there is an injustice and they cannot receive relief within their own State.

I am suggesting that we have State laws to govern people within their own States and they utilize those State laws, but when those State laws are not in existence or when the State laws are confusing at best or inconsistent within the States themselves, in Michigan for the last 12 years, we have a prime example of that.

I do not know what will happen when and if this new legislation is passed and how it will be interpreted.

I can tell you there has been tremendous confusion within our State since we have had any laws at all.

Then I think there is a need for the citizens to turn somewhere for help.

Mr. CRAIG. In other words, you are saying in the case of Michigan, assuming that the Federal Government or this Congress or this committee might move on choosing to legislate responsibility, that this body holds more wisdom than the legislature of the State of Michigan in this case?

Because it is apparently an area that the elected officials of the State of Michigan, who also are determiners of rights and responsibilities under State law, have said no, that is an area we will leave alone because that is an area of individual right.

Mr. VICTOR. No; I think the legislature in Michigan has recognized the responsibility and attempted to draft legislation to meet that responsibility.

What I am indicating is that if there is a moving from one State to another and let's say the grandparents in Michigan are seeking visitation rights under the Michigan law and the parents say we are moving to Toledo, Ohio, which is closer to Detroit than our own capital is—and it is a real possibility—what do the grandparents of the State of Michigan do?

Mr. CRAIG. Then you are saying the constitutional right of the citizen to choose what framework of law he or she may wish to live under in the case of two States differing should be abrogated?

Mr. VICTOR. I believe that the Constitution provides equal protection under the laws for all people.

Mr. CRAIG. In certain areas. That is correct.

Mr. VICTOR. That is correct. I believe under the interstate commerce laws of the Constitution—I hate those buzzers—is a clause oftentimes used in situations where we have this type of diversification, and could be utilized if the Congress felt a need to utilize it.

Mr. BIAGGI. Any more questions?

Mr. HUGHES. Will the gentleman yield?

Mr. CRAIG. Yes.

Mr. HUGHES. We are running out of time and I am going to have to go.

Mr. CRAIG. I just wanted the Professor to respond in counterpoint to that.

Mr. HUGHES. Go ahead then.

Professor AREEN. I am not sure I can respond to all of the colloquy except to pick up at the end. I think my colleague and I are not in disagreement on one point. I think he was conceding there is no constitutional authority for Federal legislation governing child custody and visitation within a particular State.

Now, if you pull in another State, then there is arguably authority to act. You have raised the more difficult question of whether it is wise to act in that case and the answer is, it seems to me, that it depends.

There is reason—and that is what the Congress demonstrated last year in passing the Parental Kidnapping Prevention Act—to make sure that States honor a thought-through decision, particularly in the face of a kidnapping where someone flees simply to avoid a court order.

Then it seems appropriate to say we will stick to the decision of the State that had real jurisdiction over the child.

On the other hand, people have a constitutional right to move, so you have to look at it case by case.

Mr. CRAIG. Thank you.

Mr. HUGHES. That is just the point I wanted to make.

Mr. BIAGGI. That is a good point.

Mr. HUGHES. One of the reasons the Parental Kidnapping Act was passed was because we see the proceedings in courts frustrated by forum shopping. One of the things we can provide is national leadership. I quite agree with Mr. Victor that it is important for us to try to develop uniform standards through the Commissioners who have done a fairly decent job in developing uniform criteria.

Unfortunately, when they developed the Uniform Act for Divorce, they neglected to even mention grandparents' rights.

It seems to me though, that this is important in the context of what is best for a youngster, that it is a consideration that has to be taken into account. If it is not considered by the court, I do not think justice is being done.

We can do a number of things. We can do a better job of making sure the Justice Department pursues those that take youngsters from the court's jurisdiction, and try to identify where they are and assist where States want to return them to the State that has jurisdiction.

It seems to me we can do a better job of developing uniform laws. We can provide national leadership in that regard, providing, as we often have in the past, the incentives for States to determine they need that uniformity throughout the land.

I think it works against the Federal structure when a State can, by using its process, deprive another State of its sovereign right to exercise jurisdiction, thereby frustrating visitation rights or any other kind of rights.

So, I think there is a lot we can do and still recognize that, historically, traditionally, and properly, visitation rights, like all domestic matters, belong to the States. We can do a better job of providing leadership.

As I view it, that is what both of you have said in essence and I quite agree with it.

Mr. BIAGGI. Mr. Victor, Professor Areen, thank you very much for your valued testimony.

Dr. Derdeyne and Dr. Kornhaber, thank you for your testimony and all the grandparents that testified.

I think this hearing represents a very significant step forward. We will get some clarification and see just exactly where we can go and what is required by this.

I assure you this is not the last of it; it will be reflected in several substantional actions by the Congress.

We will simply have to adjourn at this point for a couple of reasons, one, the bells are ringing again; and two, we should be out of this room by 2 o'clock and we are 10 minutes overdue. The landlord is relentless here.

But I would really appreciate it if staff could stay in touch with you for some further information, advice, and guidance.

I am very thankful for your presence and your contribution. Hopefully together we can make the situation a littler better.

As I said at the outset and in the intermediate stages, I am optimistic.

Thank you very much.

[Whereupon, at 2:10 p.m., the hearing was adjourned.]

APPENDIX

PREPARED STATEMENT OF DORIS JONAS FREED, CHAIRPERSON, COMMITTEE ON CHILD CUSTODY, SECTION OF FAMILY LAW

Mr. Chairman and members of the subcommittee, as chairperson of the American Bar Association's Family Law Section's Child Custody Committee, I appreciate your invitation to me to present to this Subcommittee my views in the form of an overview of the "Status of Grandparental Rights to Visitation Nation Wide," both as to statutes and judicially.

You have also requested my views as to any federal remedies appropriate in pursuing this problem.

My name is Dr. Doris Jonas Freed. I confine my practice to family law, with particular emphasis on doing whatever can be done on behalf of the welfare of children. I have written a number of books and articles, and lectured extensively on this subject.

The first part of my presentation will cover the Overview of the Status of Grandparental rights; My next comments will be addressed to possible remedies to ameliorate this problem.

PART 1.—THE STATUS OF VISITATION RIGHTS OF GRANDPARENTS: AN OVERVIEW AS OF DECEMBER 1, 1982 [1]

I. The common law

At common law, the general rule was that visitation would not be awarded over a parent's or custodian's opposition. However, the general rule was subject to some exceptions, and, in Pennsylvania at least, appears to have been subordinated to concern over the child's best interests. The three major exceptions to the usual common law rule are: (1) where there was an agreement or stipulation as to visitation, as for example, incident to a divorce proceeding; (2) where the child has resided with the person seeking visitation, as for example, where the child's custody was originally awarded to a parent who lived with grandparents and the custodial parent died and the surviving parent seeks a change of custody to him or her; and, finally, (3) where it is demonstrated that the parent seeking custody is "unfit" under the prevailing notions of fitness at the time.

Despite early American decisions that the child's best interests are paramount, the parental rights doctrine dominated common law decisions as to grandparental visitation, where a fit parent who had not contracted otherwise sought to bar such visitation. Most courts denied visitation to grandparents even in instances where there had been a long and meaningful visitation with the child, although there are a few decisions (from California and Pennsylvania) deciding otherwise.

The reasons given in common law decisions for denying visitation include the following: (1) Ordinarily the parent's obligation to allow the grandparents visitation is a moral and not a legal one; (2) judicial enforcement of a grandparent's visitation rights would divide parental authority thereby hindering it; (3) the best interests of the child are not furthered by forcing the child into the center of the conflict; (4) where there is a conflict between grandparent and parent, the parent alone should be the judge, without having to account to anyone for his motives in denying visitation; and (5) the ties of nature are the only efficacious means of restoring normal family relations and not the coercive measures which follow judicial intervention.

Obvioulsy, the first reason given for withholding visitation begs the question by giving the result as a reason. The issue is whether or not legal recognition should be

[1] This Overview is based in part on an updated article co-authored by Dr. Freed and Professor Henry Foster entitled "Grandparent Visitation: Vagaries and Vicissitudes", Journal of Divorce, Vol. V. Fall/Winter 1981 (The Haworth Press, 28 East 22nd Street, New York, New York 10010).

given to the grandparent's claim to visitation. The second reason given is not a sound reason for an automatic bar to visitation and at most represents a factor to be considered where it is shown that divided authority would place the child in a double bind. The third reason given above is not convincing becasue the best interests of the child depend upon the overall circumstances and a gratuitous presumption is not warranted. In this connection, it may be important to note that experts on child developmet are generally agreed about the importance for the child to maintain on-going meaningful relationships that are beneficial.

II. Statutes permitting grandparents' visitation

Laws have been enacted in all but a minority of states in order to mitigate the severity and uncertainty of the legal status and standing of grandparents at common law to claim visitation privileges. We have found such statutes in Alabama, Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nevada; New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, although these statutes vary in details and coverage.

Unfortunately, despite recent revisions, some of the states having such statutes still require that one or both parents be deceased for grandparents to be awarded visitation rights. For example, such was formerly true in California (under the original statute), New York (until the statutes were amended in 1974 and 1976), Michigan (before statute was amended), New Jersey (until 1973 law which now permits visitation also in cases where parents are divorced or living in different habitats) and in Missouri, Montana and Rhode Island (where such still remains the law). Alabama, Arkansas and Hawaii have no limitations, their statutes providing that in any divorce or custody cases the court may grant visitation rights to grandparents; Alaska's statute provides that such rights may be granted in actions for divorce, legal separation or when one or both of the parents have died; the statutes in Connecticut, Illinois, Kansas and Michigan appear to avoid limitations, Florida provides for such rights "as part of proceedings for dissolution of marriage". Florida, Iowa and Louisiana permit grandparents to petition the court after divorce or separation, or when a parent dies, and Iowa extends this to "where a child has been placed in a foster home". Minnesota's statute covers the situation where the grandchild has resided with the grandparents or they have had considerable contact with the child and a parent is deceased or the parents seek a divorce. Oklahoma's unique statute appears to provide that grandparents have visitation with their grandchild, and that these rights persist even though the child in question has been adopted by a stepparent.

III. Effects of adoption

Only a small minority of the states make reference to the effects of adoption on the visitation rights of grandparents. In addition to Oklahoma, reference is made to adoption in California, Colorado, Minnesota, Montana, New Jersey and Ohio, these statutes permitting visitation rights to be awarded to a grandparent where the adoption is by a stepparent or other grandparents. Since the problem of the effects of an adoption upon the visitation rights of grandparents arises frequently and the cases are in conflict, it would be wise for all states to cover this matter by an express statutory provision, and the distinction made between adoption by a stepparent or grandparent and that by a stranger has considerable merit.

IV. Extension of visitation rights of grandparents to others

Recently, there has been an extension of visitation rights to other than grandparents. The statutes in Illinois, Kansas, Pennsylvania and Wisconsin provide that great-grandparents may petition for visitation under the same circumstances as can parents.

Kansas and Virginia extend the right to stepparents, whereas California, Hawaii, Ohio and Utah permit visitation to be accorded to "anyone interested in the welfare of the child" and in California, consideration is to be given to the "amount of personal contact between such person and the child" prior to the application for visitation. Connecticut permits visitation to be awarded to "any third party including, but not limited to grandparents", and the new Alaska statute permits visitation by an "other person". Ohio provides that relatives may be granted visitation; Virginia includes "stepparents or other family members"; and Michigan specifies that there

may be visitation by "the maternal or paternal grandparents, or by others, by general or specific terms or conditions".

V. Criteria

A. *Best interests of the child.*—As in New York, many, if not most, of these statutes are qualified so that it must be found that visitation is in accordance with the best interests of the child. Minnesota directs the court to consider the amount of personal contact between the grandparent and the child, and Idaho requires a substantial relationship with the child. Although it may be superfluous to write such a requirement into the statute, such provisions have the advantage of emphasizing the important factor of the psychological relationship between the child and the party seeking visitation.

A sound argument may be made that any person or relative, in addition to a grandparent, should have standing to seek visitation rights where he or she has maintained a substantial relationship with the child. It may be in the best interests of the child to grant an aunt, or uncle, or even a non-relative visitation. Further, the grant of visitation should not be restricted necessarily to cases where there has been a parental divorce or one or both parents have died. As expressed in the Idaho and Minnesota statutes, the crucial question should be the child's welfare. Assuming the existence of a meaningful and beneficial relationship with a relative or a third person, it may be more important to the child to preserve that relationship than it would be for the custodian to have an absolute veto power over visitation.

In those states which do not have statutory provisions granting discretion to award visitation rights to non-parents, legislative consideration should be given not only to the policy basis for mitigating the common law, but also to an extension of visitation rights to relatives and non-relatives who have stood in loco parentis or have a substantial interest in the welfare of the particular child.

Several interesting issues have emerged as a result of the statutory construction and judicial interpretation of visitation provisions. California in particular has decided a series of cases which highlight two emergent issues, namely the effect of an adoption of the child on the statutory visitation privilege, and the impact of animosity or hostility between the custodian and the party seeking visitation on discretionary awards of visitation.

New Jersey and Ohio agree with California that a stepparent adoption does not terminate the visitation rights of grandparents. New Jersey's highest court has read the adoption and visitation statutes as being in pari materia and awarded visitation rights to the maternal grandparents despite an adoption of the child by its stepmother who had married the father after the mother's death. As the California court had done previously, the New Jersey court made a distinction between an adoption by a relative, such as a stepparent, and an adoption by a stranger. An Ohio decision discussed the conflict in authorities and held that a stepparent adoption was merely a factor to be considered by the court in the exercise of its discretion to grant or to withhold visitation rights when there had been an adoption. The court rejected cases from Kansas, Louisiana, Texas, and New York which had held to the contrary.

B. *Effects of animosity between child's custodian and grandparents.*—Other than the problem of reconciling visitation rights or statutes with the law and policy regarding adoptions, the most controversial issue in visitation cases has been what weight, if any, should a court give to the existence of animosity between the parties. As we have seen, the common law regarded the opposition of the custodian as sufficient reason for denying visitation. Where there is statutory recognition of visitation rights the mere existence of animosity alone usually has been regarded as an insufficient reason for withholding them. Perhaps Pennsylvania reached a sensible result, even though there was no visitation statute, when a case was remanded in order for the trial court to determine the basis for any alleged animosity. The trial court in effect also was directed to retain continuing jurisdiction in order to determine what effect, if any, visitation had upon the child's welfare.

The courts in California, Georgia, Maryland, Pennsylvania, New Jersey, New York and many other states now agree that animosity existing between parents, stepparents and grandparents, in and of itself, is no bar to an award of visitation rights, and in a number of court decisions, animosity has been offset by the fact that grandparents have raised the child or had close contact with the child over a period of time.

It is difficult to see why statutory visitation privileges should rest on a basis different from visitation rights generally, such as that by a divorced parent. The existence of animosity or hostility between the divorced parties, in and of itself, is not a

ground for withholding visitation. Although there is an esoteric but well-known argument that custodial parents should have a veto power over any and all visitation, there is scant, if any legal, authority to back up the argument, and in fact, it has been rejected almost universally.

At most, animosity may be a matter which invites exploration by the court to determine its factual basis, or a factor to be considered in awarding and setting the terms of visitation. Otherwise, as has been pointed out, the custodian may lift himself by his bootstraps by creating friction which he then points to as a reason for denying visitation. Moreover, the approach should not be in terms of rewarding or punishing feuding parties, rather the concern should be with the child's best interests. Especially where there has been a meaningful association between the child and the party seeking visitation, the blame for existing hostilities ordinarily is irrelevant unless it has some direct bearing on the child's welfare. Obviously, grandparents may be good grandparents and yet for one reason or another, have had bad relations with a son or daughter-in-law.

C. *The child's wishes.*—The matter of the child's preference regarding visitation has been accorded the same weight as in custody cases generally. In other words, a stated preference of an older child is a matter to be considered in an exercise of discretion by the court, but the child's wishes are not determinative. In one case, the Pennsylvania court gave the child's opposition to visitation as a reason for denying it. The child had said that she did not want to visit the grandparents because "they fight my mother." An Ohio decision likewise denied visitation because the child disliked the grandparents. The difficulty with these cases is that the child may have been "brainwashed" or may be parroting what the custodial parent told him.

Where there are visitation statutes, a positive desire on the part of the child for visitation should carry great weight, but a negative attitude on the part of the child may require further exploration. An Illinois decision approached visitation in terms of the right of the children to know and associate with grandparents and honored the stated preference of the children. A New York decision held that the trial court had placed undue emphasis upon the grandchildren's opposition to court-ordered visitation.

D. *The health of the child.* The effect of visitation upon the health of the child is another important factor in visitation cases, as well as in custody cases generally. Where it is shown that visitation would have an adverse effect on the child's health, generally it will be denied. The other side of the coin is shown by a California decision, where the court concluded that a termination of contact with grandparents, who had stood in loco parentis with the child, probably would have an adverse effect upon the child's health and welfare.

CONCLUSION

Since only a minority of states do not have statutory provisions permitting an award of visitation to grandparents, or other concerned relatives or friends of the child, there currently is greater judicial consciousness of the psychological theory of the importance of existing associations and intergenerational contacts. If the best interests of the childs is a meaningful concept, and the focal point in visitation, as well as custody cases, it is clear that it is sound policy to nurture, rather than to cut off close relationships. Properly, the recognition of visitation rights of grandparents should be entrusted to the sound discretion of the court. It is not the grandparents' proprietary interest in the grandchild which justifies as award of visitation or custody; it is the need of the grandchild to know and to have an association with concerned grandparents. The pleasures grandparents may derive from that association are merely a bonus, albeit a very precious one.

With reference to the two major issues in the visitation cases, that is, the effect of the child's adoption upon visitation rights, and the weight to be given the existence of animosity between the parties, we conclude that both issues should be approached from the perspective of the child's best interests. Surely stepparent adoption or adoption of the child by other relatives does not require insulation of the child from contact with grandparents or other meaningful associations and it is only in the case of non-relative adoption where an argument may be made that adoption policies demand that visitation be denied. On the issue of animosity and its role in visitation cases, the cases are correct which conclude that there is no convincing reason why the existence of a state of animosity should have any more effect when grandparents seek visitation than it does where visitation is awarded to the other parent. In either event, it is a circumstance to be considered, but the child's welfare, including his right to maintain meaningful associations, should be the controlling consideration.

PART 2.—REMEDIES TO FACILITATE GRANDPARENT VISITATION

Any remedy to facilitate grandparental visitation should not be in the form of federal legislation, since this would be an unconstitutional intrusion into state law.

Perhaps the subject might be addressed by the National Conference of Commissioners on Uniform State Laws. This Conference promulgates proposal model acts which, when finalized, are offered to the states for their adoption in whole or in part.

It would be up to the Conference, of course, to decide in the first instance, whether such a subject would be of sufficient importance to be the subject of its study and work.

I thank you, Mr. Chairman and Members of the Subcommittee, for your invitation to me to address you on this subject and to present my views.

PREPARED STATEMENT OF BETTIE J. LAMOTTE

GRANDPARENTS—THE OTHER VICTIMS OF DIVORCE AND CUSTODY DISPUTES

Mr. Chairman and members of the subcommittee; I am extremely pleased to have this opportunity to present testimony on a subject extremely importance to me. I would like to commend the subcommittee for undertaking these hearings. From personal experience I am aware of the emotional character of the issue. If nothing more is accomplished, I hope the general public and the courts will come to understand that there are indeed other victims of divorce and custody disputes.

As background, I would like to tell you a little about my family and the two most important reasons I am presenting this testimony—Tiffany Allison LaMotte, aged 6, and Tara Danielle LaMotte, aged 5.

My husband's son was married in 1973. It was certainly not a marriage made in heaven. They were young, both in college, and, we believed, not ready to assume the responsibilites that marriage and a family inevitably bring. After Tiffany's birth in 1976, problems began to surface. There were arguments, brief separations, and subsequent reconciliations. Tara, a beautiful child who, I am told, borders on genius, was the result of one of those reconciliations. The marriage, however, continued to falter and the final separation came in 1980.

It is difficult to describe the depth of hatred and bitterness in this divorce. My husband and I attempted whenever we could to bring reason to the situation for Keith and his estranged wife, the children, and ourselves. In order that you might better understand the bitterness, I would like to relate a portion of the last conversation I had with the children's mother. I had called to talk with her and the girls. She was cold, indifferent and uncompromising. Her final words: "You have another grandchild. You can shower her with your affection. My girls don't need you and you don't need them". I was devastated and heart-broken.

All effects to talk to or see the girls since that day in September 1980 have failed. Their father was granted limited visitation pending the divorce and my husband saw them in March 1981. I saw them last in July 1981. The mother now has successfully transferred the bitterness and hatred she feels toward us to the children. And although their father's visitation has been increased, he is still unable to see them because they now refuse to have anything at all to do with him. So successful has been the alienation.

As you probably kn w, the State of Maryland recently enacted legislation which allows grandparents tne right to petition the court for visitation. I have carefully researched the subject and read every article and case I could find with the aim of pursuing the matter in court. However, attorneys I have talked with recommended against pursuing legal action, arguing that in the end the true victims are the children. Had we pursued the issue in court and won, would we have been able to withstand the emotional strain of the children running crying to their room in absolute fear of us?

In *Mimkon* v. *Ford* (Supreme Court of New Jersey, 1975. 66 N.J. 426, 332 A.2d 199), the Court very eloquently stated what I believe to be an accurate description of the grandparent-grandchild relationship. I would like to quote a portion of that case for you:

"It is biological fact that grandparents are bound to their grandchildren by the umbreakable links of heredity. It is common human experience that the concern and interest grandparents take in the welfare of their grandchildren far exceeds anything explicable in purely biological terms. A very special relationship often arises and continues between grandparents and grandchildren. The tensions and conflicts which commonly mar relationships between parents and children are often

absent between those very same parents and their grandchildren. Visits with grandparents are often a precious part of a child's experience and there are benefits which devolve upon the grandchild from the relationship with his grandparents which he cannot derive from any other relationship. Neither the Legislature nor this Court is blind to human truths which grandparents and grandchildren have always known."

I shared a very special relationship with my grandparents and want only to share with my grandchildren some of my experiences and love.

The various state legislatures and the United States Congress can enact laws that will permit grandparents the right to visit their grandchildren, but can they write any law a provision that prevents a custodial parent from fostering bitterness and hatred in the children.

I think not. It does not matter how many laws there might be on the books designed for my benefit and the benefit of all other grandparents in the nation who are forbidden to love and comfort their grandchildren. They are worthless unless you are able to legislate compassion into divorce and custody.

I do not envy the task you have chosen. There are no easy answers. I would, however, like to see visitation laws amended in a way that would allow a non-custodial parent to petition the court for visitation in degrees. For example, the non-custodial parent could ask for visitation for himself only, for himself and the paternal grandparents, or for everyone in the family—aunts, uncles, and cousins. These natural associations are so vital to the growing up process.

This is a difficult and emotional issue. I am deeply pleased that the subcommittee has chosen to explore this important aspect of human relationships. If nothing is accomplished legislatively, my hope is that you are able to publicize the issue and that the courts will recognize the extent of the problem and take it into account when deciding visitation.

I understand that Tiffany and Tara are accomplished young ballet dancers. I would give just about anything if I could attend one of their recitals. It's Christmas and I would like to share the joy and excitement of Santa's visit, the school play and everything that makes Christmas a special time for children.

Thank you for affording me this opportunity to share with you my very personal views on this emotional issue.

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